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Attorneys for Defendant  
WAL-MART STORES, INC.

E-filing

ORIGINAL  
FILED  
NOV 19 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMC

DONALD C. BRYAN, VIRGIL CALDWELL,  
CARROLL HAMPTON, and ROBERT  
RODRIGUEZ,

Plaintiffs,

v.

WAL-MART STORES, INC., a Delaware  
Corporation dba WAL-MART  
TRANSPORTATION LLC, JEFFREY  
HAMMOND and DOES 1-50, inclusive,

Defendants.

CASE NO.

CV 08

5221

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441

[Superior Court in and for the County of  
Alameda, Case No. RG08414583]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS DONALD  
 2 C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON, ROBERT RODRIGUEZ AND  
 3 THEIR COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that, pursuant to sections 1332 and 1441 of Title 28 of the United  
 5 States Code, Defendant Wal-Mart Stores, Inc. ("Wal-Mart") hereby removes the state court action  
 6 described below to the United States District Court for the Northern District of California. Defendant  
 7 bases removal upon the following grounds:

8 **A. Factual Background**

9 1. On October 10, 2008, plaintiffs Donald C. Bryan, Virgil Caldwell, Carroll Hampton,  
 10 and Robert Rodriguez ("Plaintiffs") filed a putative class action complaint ("Complaint") against  
 11 Wal-Mart in the Superior Court of the State of California for Alameda County. The Complaint was  
 12 captioned *Donald C. Bryan, Virgil Caldwell, Carroll Hampton, and Robert Rodriguez v. Wal-Mart*  
 13 *Stores, Inc., a Delaware Corporation dba Wal-Mart Transportation LLC and DOES 1-50, inclusive*  
 14 (Case No. RG08414583). Plaintiffs served a copy of this initial Complaint on Defendant's registered  
 15 agent on October 21, 2008.

16 2. On November 3, 2008, Plaintiffs filed the First Amended Complaint ("FAC") in this  
 17 action. The FAC added an additional defendant, Jeffrey Hammond, to the Defendants listed in the  
 18 caption. Plaintiffs served a copy of this initial Complaint on Defendant Wal-Mart's registered agent  
 19 on November 12, 2008. A true and correct copy of plaintiffs' initial complaint, as well as plaintiffs'  
 20 first amended complaint, summons and other papers served by Plaintiff in this action are attached  
 21 hereto as **Exhibit A**.

22 3. Defendant has taken no action in the state court, and the state court has not entered any  
 23 orders in that action.

24 **B. Jurisdictional Statement**

25 4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), as the Notice  
 26 is filed on November 19, 2008, which is within thirty (30) days after October 21, 2008, the date Wal-  
 27 Mart received the initial complaint.  
 28

1           5.       This is a civil class action of which this Court has original jurisdiction pursuant to 28  
2 U.S.C. § 1332. Defendant is authorized to remove this action to this Court pursuant to 28 U.S.C.  
3 § 1441(a) and 28 U.S.C. § 1453.

4           6.       As set forth in greater detail below, this action satisfies each of the three requirements  
5 for removal set forth in 28 U.S.C. § 1332(d): (a) there are over 100 alleged class members in  
6 Plaintiff's proposed class (*id.* § 1332(d)(5)(B)); (b) the combined alleged claims of all potential class  
7 members, in the aggregate, exceed \$5,000,000 (*id.* § 1332(d)(2)); and (c) the requisite diversity exists  
8 (*id.* § 1332(d)(2)(A)).

9           7.       There are over 100 class members in Plaintiff's proposed class, as required by 28  
10 U.S.C. § 1332(d)(5)(B). Plaintiff seeks to represent a class of "all current and former California-  
11 based, 'Drivers' or persons in an equivalent position or performing equivalent job duties however  
12 titled, who worked and/or are working for Defendants, and each of them, within four years prior to  
13 the filing of the original Complaint in this action up to and including the resolution of this action, yet  
14 were not paid wages in violation of California Labor Code sections 201, 202, 203, 226.7, 510 and  
15 512 and subsections 11, and 12 of the applicable Industrial Welfare Commission Orders." (Compl.  
16 ¶ 24; FAC ¶ 24.) Plaintiff also alleges that the members of this proposed class are "so numerous that  
17 joinder of all members would be impractical." (*Id.*, ¶ 25; FAC ¶ 25.) Based on information and  
18 belief, Defendant avers that more than 500 persons may fall within the scope of the class definition  
19 proposed by Plaintiffs.

20           8.       Defendant avers that the matter in controversy exceeds \$5,000,000, exclusive of  
21 interest and costs, for several reasons:

22           a.       Plaintiffs contend that the named Plaintiffs and the putative class are entitled to  
23 "damages and/or restitution, as appropriate, to Plaintiffs and to the Class Members, who have not  
24 been paid wages as required by California law and/or whose records of hours worked have not been  
25 maintained or furnished, have been inaccurately maintained or have been altered or destroyed,  
26 including exemplary damages where and if appropriate." (Compl. ¶ 3(a); FAC ¶ 3(a).) Plaintiffs  
27 seek recovery for members of the putative class who "did not receive all pay due and owing at the  
28

1 time of their employment” including pay for “meal time, break time, and time devoted to work.” (*Id.*  
 2 ¶ 23; FAC ¶ 23.)

3 b. Plaintiff prays for disgorgement of “all monies wrongfully withheld, including  
 4 interest, as a result of the practices alleged [in the Complaint].” (*Id.* ¶ 3(b); FAC ¶ 3(b).)

5 c. Plaintiff seeks “exemplary and punitive damages as appropriate available  
 6 under each cause of action, pursuant to California Civil Code 3294.” (Complaint Prayer for Relief  
 7 ¶ 3; FAC Prayer for Relief ¶ 3.) Such damages are relevant to a consideration of the amount in  
 8 controversy in this type of action. *See, e.g., Yeroushalmi v. Blockbuster Inc.*, No. 05-2550, 2005 U.S.  
 9 Dist. LEXIS 39331, at \*19 (C.D. Cal. July 11, 2005) (holding that “it is proper [under Class Actions  
 10 Fairness Act] to consider the cost of injunctive relief, potential punitive damages, and attorney’s  
 11 fees”).)

12 d. Plaintiff seeks equitable and injunctive relief, including “an injunction  
 13 prohibiting Defendants, and each of them, from (1) failing to pay wages to “Drivers” as required  
 14 under California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, and subsections 11 and 12  
 15 of the applicable Industrial Welfare Commission Orders.” (Compl. ¶ 3(c); FAC ¶ 3(c).) Such relief  
 16 is relevant to a consideration of the amount in controversy in this type of action. *See, e.g.,*  
 17 *Yeroushalmi*, 2005 U.S. Dist. LEXIS 39331, at \*19; *Nelson v. Bic USA, Inc.*, No. 07-2367, 2008 U.S.  
 18 Dist. LEXIS 27366 (S.D. Cal. Apr. 1, 2008), at \*18-19, n.7 (because plaintiff sought primarily  
 19 injunctive as opposed to monetary relief, “the amount in controversy could permissibly be evaluated  
 20 in consideration of the other costs [defendant] is at risk of incurring should Plaintiff prevail on her  
 21 requests for equitable relief under disgorgement, injunctive, and other theories”).

22 e. Plaintiff’s counsel seeks a recovery of its attorneys’ fees pursuant to California  
 23 Labor Code §§ 218.5 and 1194 (Compl. ¶ 3(e); FAC ¶ 3(e)), and the Ninth Circuit “ha[s] held that  
 24 attorneys’ fees [a]re properly included in the amount in controversy in a class action” under the Class  
 25 Actions Fairness Act of 2005. *See Lowdermilk v. United States Bank Nat’l Ass’n*, 479 F.3d 994,  
 26 1000 (9th Cir. 2007) (citing *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942-43 (9th Cir. 2001)); *see*  
 27 *also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (noting that “Section  
 28 1332(a)’s amount-in-controversy requirement excludes only ‘interest and costs’ and therefore

1 includes attorneys' fees[,]” and that plaintiff sought attorneys' fees pursuant to same state statutes  
 2 cited here).

3 f. Based on the potential size of the class, Defendant avers that the amount in  
 4 controversy readily exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2).

5 9. Finally, the requisite diversity exists pursuant to 28 U.S.C. § 1332(d)(2)(A) because  
 6 Plaintiffs are citizens of a state different from Defendant Wal-Mart. Plaintiffs allege that they were at  
 7 the time the Complaint was filed California citizens and residents. (Compl. ¶¶ 8-11; FAC ¶¶ 8-11.)  
 8 Defendant Wal-Mart avers that it was at the time the Complaint was filed and still is a corporation  
 9 organized and existing by virtue of the laws of the State of Delaware, and having its principal place  
 10 of business in the State of Arkansas. Defendant was at the time the Complaint was filed and is still a  
 11 citizen of the States of Delaware and Arkansas, and Wal-Mart is not now and has never been a citizen  
 12 of the State of California, where this action was brought within the meaning of 28 U.S.C. § 1332(c).  
 13 See 28 U.S.C. § 1332(c) (for purposes of Sections 1332 and 1441, “a corporation shall be deemed to  
 14 be a citizen of any State by which it has been incorporated and of the State where it has its principal  
 15 place of business”). At no time has Defendant ever been a citizen or resident of California.

#### 16 C. Intradistrict Assignment

17 10. Pursuant to Civ. L.R. 3-2(d), this action should be assigned to the San Francisco or  
 18 Oakland Division because the Complaint was filed in the Alameda County Superior Court.

#### 19 D. Removal Procedure

20 11. Wal-Mart hereby complies with 28 U.S.C. § 1446(a) by attaching hereto as **Exhibit A**  
 21 all process, pleadings, and orders received in the state court action.

22 12. Wal-Mart will promptly give written notice of this Notice to plaintiffs and will file a  
 23 copy of this notice with the clerk of the Alameda County Superior Court, as required by 28 U.S.C.  
 24 § 1446(d).

25 13. Pursuant to 28 U.S.C. § 1446(a), all process, pleadings, and other papers received by  
 26 Defendant in the state court action, including the Complaint and the FAC, are attached to this Notice  
 27 as **Exhibit A**.  
 28

1           14.    This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed  
2 within thirty days of the defendant's receipt of the initial pleading. Defendant received the  
3 Complaint when it was served via its registered agent on October 21, 2008. Defendant files this  
4 Notice of Removal on November 19, 2008, within the thirty-day deadline provided by 28 U.S.C. §  
5 1446(b).

6           15.    Defendant will promptly give notice of this Notice to Plaintiff and will file a copy of  
7 this notice with the clerk of the Alameda County Superior Court pursuant to 28 U.S.C. § 1446(d).

8  
9           WHEREFORE Defendant removes the original action brought by Plaintiff now pending in the  
10 Alameda County Superior Court from the Alameda County Superior Court to the United States  
11 District Court for the Northern District of California.

12  
13  
14  
15 DATED: November 19, 2008

GIBSON, DUNN & CRUTCHER LLP

16  
17 By: G. Charles Nierlich  
          G. Charles Nierlich

18 Attorneys for Defendant WAL-MART STORES, INC.  
19  
20  
21  
22  
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24  
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27  
28

## DECLARATION OF SERVICE

I, Robin McBain, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is One Montgomery Street, 31st Floor, San Francisco, California 94104, in said County and State. On November 19, 2008, I served the within:

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441;  
CIVIL COVER SHEET;  
U.S. DISTRICT COURT OF NORTHERN CALIFORNIA ECF REGISTRATION  
INFORMATION HANDOUT**

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown:


**Attorneys for Plaintiffs**

Andrew B. Jones  
WAGNER & JONES LLP  
1111 East Herndon, Ste. 317  
Fresno, CA 93720  
Telephone: (559) 449-1800  
Facsimile: (559) 449-0749



**BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the date shown below. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on November 19, 2008, at San Francisco, California.

By   
Robin McBain

100550796\_2.DOC

# **Exhibit A**



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Andrew B. Jones 076915</b> <b>WAGNER &amp; JONES LLP</b> <b>1111 E. Herndon, Ste. 317</b> <b>Fresno, CA 93720</b> TELEPHONE NO.: <b>559/449-1800</b> FAX NO.: <b>559/449-0749</b> ATTORNEY FOR (Name): <b>PLAINTIFFS</b> <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b> STREET ADDRESS: <b>1225 Fallon Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Oakland, CA 94612</b> BRANCH NAME:		<b>FILED BY FAX</b> <b>ALAMEDA COUNTY</b> <b>October 10, 2008</b> <b>CLERK OF</b> <b>THE SUPERIOR COURT</b> <b>By Rosanne Case, Deputy</b> <b>CASE NUMBER:</b> <b>RG08414583</b>
CASE NAME: <b>BRYAN et al. v. WAL-MART et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NUMBER:		
JUDGE:		
DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses

b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 6

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/9/08

Andrew B. Jones 076915  
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

# INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

### Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

### Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/DPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/DPD/WD

### Non-P/DPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-P/DPD/WD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

### Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

CIVIL CASE COVER SHEET

Fax Server

10/10/2008 4:37:35 PM PAGE 002 Fax Server

10/10/2008 18:21 FAX 5594490749

Wagner and Jones

10-21-08

2:26 pm

003/003

**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

WAL-MART STORES, INC., a Delaware corporation dba WAL-MART TRANSPORTATION, LLC, and DOES 1-50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DONALD C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON and ROBERT RODRIGUEZ

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**FILED BY FAX**

ALAMEDA COUNTY

October 10, 2008

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

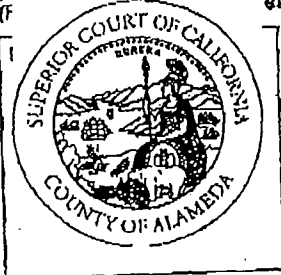
ALAMEDA SUPERIOR COURT  
1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Andrew B. Jones  
WAGNER & JONES LLP  
1111 E. Herndon, Ste. 317  
Fresno, CA 93720  
DATE: October 10, 2008Clerk, by \_\_\_\_\_  
(Secretario)Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para probar el servicio de esta citación use el formulario Proof of Service of Summons. (POS-010).)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):

under:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation)     | <input type="checkbox"/> CCP 416.80 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

4. ☒ by personal delivery on (date): 10-21-08

FILED BY FAX  
ALAMEDA COUNTY

October 10, 2008

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

CASE NUMBER:  
RG08414583

LAW OFFICES OF  
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Attorney for Plaintiffs DONALD C. BRYAN, VIRGIL CALDWELL,  
CARROLL HAMPTON, and ROBERT RODRIGUEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

DONALD C. BRYAN, VIRGIL  
CALDWELL, CARROLL HAMPTON, and  
ROBERT RODRIGUEZ

Plaintiffs,

vs.

WAL-MART STORES, INC., a  
Delaware Corporation dba WAL-  
MART TRANSPORTATION LLC and  
DOES 1-50, inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF

1. VIOLATION OF LABOR CODE  
SECTIONS 226.7 AND 512  
AND SECTION 11 OF THE  
INDUSTRIAL WELFARE  
COMMISSION WAGE ORDERS.  
(FAILURE TO PROVIDE A  
MEAL PERIOD.)
2. VIOLATION OF LABOR CODE  
SECTIONS 226.7 AND 512  
AND SECTION 12 OF THE  
INDUSTRIAL WELFARE  
COMMISSION WAGE ORDERS.  
(FAILURE TO PROVIDE A  
REST PERIOD.)
3. VIOLATION OF LABOR CODE  
203 (FAILURE TO PAY  
WAGES DUE AND OWING UPON  
TERMINATION OF  
EMPLOYMENT.)
4. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE 17200 ET  
SEQ.
5. FAILURE TO PAY WAGES DUE  
AND OWING (CA LABOR CODE  
510)
6. FAILURE TO PROVIDE  
ACCURATE WAGE STATEMENTS  
(Ca. Labor Code 226)
7. FAILURE TO PAY MINIMUM  
WAGE

JURY TRIAL DEMANDED

I

1                   GENERAL ALLEGATIONS COMMON TO EACH CAUSE OF ACTION

2           Representative Plaintiffs, DONALD C. BRYAN, VIRGIL CALDWELL,  
3 CARROLL HAMPTON, and ROBERT RODRIGUEZ, bring this challenge to  
4 Defendants lucrative, repressive and unlawful business practices  
5 on behalf of themselves and on behalf of all other members of the  
6 general public similarly situated, and hereby allege and state as  
7 follows:

8           1. This is a class action brought against Defendants, and  
9 each of them, on behalf of a collective class of all persons  
10 employed by Defendants, and each of them, in the position of  
11 "Driver" in the State of California (or persons with the  
12 equivalent position however titled) who were not provided meal and  
13 rest periods and who were not paid wages pursuant to California  
14 law prior and subsequent to the date this action was filed.

15           2. This action alleges that Defendants, and each of them:  
16 (1) improperly and in violation of California state law failed to  
17 pay wages and penalties due and owing to its "Drivers" in  
18 violation of California Labor Code sections 201, 202, 203, 226.7,  
19 510 and 512, and sections 11, and 12 of the applicable California  
20 Industrial Welfare Commission Orders; and, (2) violated California  
21 Business and Professions Code 17200, et. seq., all in conscious  
22 disregard of the Plaintiffs' and the Class members' rights,  
23 entitling Plaintiffs and the Class to an award of punitive  
24 damages.

25           3. This action seeks relief for the unremedied violations of  
26 California law including, inter alia:

27           (a) damages and/or restitution, as appropriate, to  
28 Plaintiffs and to the Class Members, who have not been  
paid wages as required by California law and/or whose  
records of hours worked have not been maintained or  
furnished, have been inaccurately maintained or have  
been altered or destroyed, including exemplary damage  
where and if appropriate;



1 (b) an order requiring disgorgement from Defendants, and  
2 each of them, of all monies wrongfully withheld,  
including interest, as a result of the practices alleged  
herein;

3 (c) implementation of other equitable and injunctive  
4 relief, including inter alia, an injunction prohibiting  
5 Defendants, and each of them, from (1) failing to pay  
wages to "Drivers" as required under California Labor  
6 Code sections 201, 202, 203, 226, 226.7, 510, 512, and  
subsections 11 and 12 of the applicable Industrial  
Welfare Commission Orders;

7 (d) interest;

8 (e) attorney fees and costs as provided by statute  
9 and/or applicable case law including California Labor  
Code sections 218.5 and 1194;

10 (f) such other relief as the court deems just and proper.

11 4. This class-action lawsuit for damages and equitable  
12 relief is founded exclusively upon California state law including,  
13 but not limited to, violations of provisions of the California  
14 Labor Code, Industrial Welfare Commission Wage Orders, and the  
15 California Business and Professions Code.

16 5. Venue is proper in Alameda County because Defendants own  
17 and operate business facilities in Alameda County where Defendants  
18 have failed to pay Plaintiffs and Class Members wages in violation  
19 of California law. Plaintiffs and the Class Members have suffered  
20 damages in Alameda County and will continue to suffer the same  
21 harm as the Representative Plaintiffs as a result of Defendants,  
22 and each of their wrongful conduct unless the relief requested  
23 herein is granted.

24 6. Defendants, and each of them, at all relevant times  
25 herein are duly organized and existing as entities under and by  
26 virtue of law, authorized to do and doing business in the County  
27 of Alameda, and the State of California.

28 7. Plaintiffs and Class Members were and are employed as  
"Drivers" (or the equivalent) by Defendants, and each of them, and

1 work in various other counties in the State of California. The  
2 majority of the Class are citizens of the State of California.

3 8. Plaintiff, DONALD C. BRYAN, is a resident of Kings  
4 County, California and a citizen of the State of California. Mr.  
5 BRYAN has been employed by Defendant, and each of them, as a  
6 Driver from April 1993 to November 2007. He joins this action in  
7 his individual capacity on behalf of himself, and on behalf of all  
8 other Delivery Drivers similarly situated pursuant to California  
9 Code of Civil Procedure section 382, and pursuant to California  
10 Business and Professions Code 17200 et. seq., on behalf of the  
11 general public.

12 9. Plaintiff, VIRGIL CALDWELL, is a resident of Fresno County  
13 and is a citizen of the State of California. Mr. CALDWELL has  
14 been employed by Defendant, and each of them as a Driver from  
15 August 1994 to September 2006. He joins this action in his  
16 individual capacity on behalf of himself, and on behalf of all  
17 other Delivery Drivers similarly situated pursuant to California  
18 Code of Civil Procedure section 382, and pursuant to California  
19 Business and Professions Code 17200 et. seq., on behalf of the  
20 general public.

21 10. Plaintiff, CARROLL HAMPTON is a resident of Fresno  
22 County and is a citizen of the State of California. Mr. HAMPTON  
23 has been employed by Defendant, and each of them as a Driver from  
24 August 1994 to January 31, 2008. He joins this action in his  
25 individual capacity on behalf of himself, and on behalf of all  
26 other Delivery Drivers similarly situated pursuant to California  
27 Code of Civil Procedure section 382, and pursuant to California  
28 Business and Professions Code 17200 et. seq., on behalf of the  
general public.

11. Plaintiff, ROBERT RODRIGUEZ is a resident of Tulare

1 County and is a citizen of the State of California. He has been  
2 employed by Defendant, and each of them as a Driver from April  
3 1992 to the present. Mr. RODRIGUEZ joins this action in his  
4 individual capacity on behalf of himself, and on behalf of all  
5 other Delivery Drivers similarly situated pursuant to California  
6 Code of Civil Procedure section 382, and pursuant to California  
7 Business and Professions Code 17200 et. seq., on behalf of the  
8 general public.

9 12. Plaintiffs are informed and believe and thereupon allege  
10 that Defendants, and each of them, are at all time relevant  
11 hereto, persons, residing in various counties in the State of  
12 California.

13 13. Plaintiffs are further informed and believe and thereupon  
14 allege that at all relevant times herein such DOE 1-20 Defendants,  
15 were managing agents of Defendants, and each of them, with policy  
16 making authority to set wages, hire, fire, discipline employees,  
17 and with supervisory control over Plaintiffs and Class members.

18 14. The true names and capacities of the Defendants sued  
19 herein as DOES 1 through 50, inclusive, whether individual,  
20 corporate, associate or otherwise, are unknown to Plaintiffs, who  
21 therefore sues such Defendants by their fictitious names pursuant  
22 to California Code of Civil Procedure section 474. Plaintiffs are  
23 informed and believe that each of the Doe Defendants are liable to  
24 Plaintiffs under the same theories and causes of action as set  
25 forth in this complaint. Plaintiffs are informed and believe and  
26 thereon allege that the DOE Defendants are California residents.  
27 Plaintiffs will amend this complaint to show such true names and  
28 capacities when the same have been ascertained.

15. Plaintiffs are informed and believe and thereon allege  
that each of the Defendants identified herein was at all times



1 relevant hereto the agent, employee, servant, representative or  
2 alter ego of the remaining Defendants, and was acting, at least in  
3 part, within the course and scope of such relationship.

4 16. At all times mentioned, Defendants, and each of them,  
5 were members of, and engaged in, a joint venture, partnership and  
6 common enterprise, and acting within the course and scope of, and  
7 in pursuit of, said joint venture, partnership and common  
8 enterprise.

9 17. At all times herein mentioned, Defendants, and each of  
10 them, ratified each and every act or omission complained of  
11 herein. At all times mentioned, the Defendants, and each of them,  
12 aided and abetted the acts and omissions of each and all of the  
13 other Defendants and proximately caused the damages as alleged  
14 herein.

15 18. Defendants, and each of them, through their agents and  
16 employees (not including the Plaintiffs, members of the  
17 "Collective Class", or "Class-Action Class" (members)),  
18 established and carried out a policy which violated California  
19 Labor Code sections 201, 202, 203, 226.7, 510 and 512, and  
20 Subsections 11, and 12 of the applicable Industrial Welfare  
21 Commission Orders in that Plaintiffs, members of the Collective  
22 Class, and Class-Action Class members were not paid wages  
23 according to California law for hours that they were required to  
24 work including, but not limited to, hours devoted to the  
25 following: (1) work during their statutory lunch or break periods;  
26 (2) work during which Defendants, and each of them, automatically  
27 deducted 30 minutes or more from their daily hours worked; and (3)  
28 work during which they were engaged to wait (standby time).

19. As a result of the actions of Defendants, and each of  
them, Plaintiffs, members of the Collective Class, and Class-

1 Action Class members suffered damages, including, but not limited  
2 to, lost pay, wages, benefits, vacation pay, and interest.

3 20. These violations of law were committed knowingly and  
4 willfully by Defendants, and each of them, with full knowledge of  
5 the required laws cited herein.

6 21. The actions of Defendants, and each of them, were  
7 therefore fraudulent, malicious, and oppressive and as such  
8 Plaintiffs, the Collective Class and the Class-Action Class  
9 members are entitled to an award of punitive damages by way of  
10 example and deterrence.

11 22. The duties and responsibilities of the "Drivers" are  
12 virtually identical from region to region, area to area, store to  
13 store and employee to employee within the State of California.  
14 Further, any variation in job activities between the different  
15 individuals are legally insignificant to the issues presented by  
16 this action since the central facts remain, to wit, Plaintiffs and  
17 the Representative Class and Class-Action Class Members performed  
18 nonexempt work for which they have never been paid the wages  
19 earned as required by California law.

20 23. Some of the Class Members were involuntarily discharged  
21 by Defendants, constructively terminated or voluntarily terminated  
22 their employment, and did not receive all pay due and owing at the  
23 time their employment with Defendants, and each of the, was  
24 terminated. Defendants, in violation of California Labor Code  
25 sections 201, 202, and 203 had a consistent uniform policy,  
26 practice and procedure of willfully failing to pay the earned and  
27 wages of all such former employees. The Defendants willfully  
28 failed to pay the earned and unpaid wages of such individuals,  
including, but not limited to, meal time, break time, and time  
devoted to work which Defendants, and each of them, automatically

1 deducted from their daily hours worked. The Defendants willfully  
2 failed to pay the earned and unpaid wages of such individuals,  
3 including, but not limited to, timely payment of accrued vacation  
4 on termination of employment. Members of the Collective Class and  
5 members of the Class-Action Class did not secret or absent  
6 themselves from Defendants nor did they refuse to accept the  
7 earned but unpaid wages from Defendants. Accordingly, Defendants  
8 are liable for waiting time penalties for the unpaid wages  
9 pursuant to California Labor Code sections 201, 202, and 203.

## 10 II

### 11 CLASS ACTION ALLEGATIONS

12 24. This complaint is brought by Representative Plaintiffs,  
13 DONALD C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON, and ROBERT  
14 RODRIGUEZ, pursuant to California Code of Civil Procedure section  
15 382 on behalf of the Class. All claims alleged herein arise  
16 exclusively under California law for which Representative  
17 Plaintiffs seek the relief authorized under California law. The  
18 class is comprised of, and defined as, all current and former  
19 California-based, "Drivers" or persons in an equivalent position  
20 or performing equivalent job duties however titled, who worked  
21 and/or are working for Defendants, and each of them, within four  
22 years prior to the filing of the original Complaint in this action  
23 up to and including the resolution of this action, yet were not  
24 paid wages in violation of California Labor Code sections 201,  
25 202, 203, 226.7, 510 and 512 and subsections 11, and 12 of the  
26 applicable Industrial Welfare Commission Orders.

27 25. The members of the Class are so numerous that joinder of  
28 all members would be impractical, if not impossible. The identity  
of each members of the Class is readily ascertainable by review of  
Defendant's own business records, including but not limited to,

1 records required by subsection 7 of the applicable Industrial  
2 Welfare Commission Orders and California Labor Code sections 1174.  
3 Further, the subject matter of this action both as to factual  
4 matters and as to matters of law, is such that there are questions  
5 of law and fact common to the Class which predominate over  
6 questions affecting only individual members.

7       26. The California Labor Code and Industrial Welfare  
8 Commission Wage Order provisions upon which Representative  
9 Plaintiffs base their claims are broadly remedial in nature.  
10 These laws and labor standards serve an important public interest  
11 in establishing minimum working conditions and standards in  
12 California. These laws and labor standards protect the average  
13 working employee from exploitation by employers who may seek to  
14 take advantage of superior economic and bargaining power in  
15 setting onerous terms and conditions of employment. The nature of  
16 this action and the format of laws available to Representative  
17 Plaintiff and the Class make the class action format a  
18 particularly efficient and appropriate procedure to redress the  
19 wrongs alleged herein. Further, this case involves a large  
20 corporate employer and a large number of individual employees with  
21 many relatively small claims. If each employee were required to  
22 file an individual lawsuit, the corporate Defendants would  
23 necessarily gain an unconscionable advantage since they would be  
24 able to exploit and overwhelm the limited resources of each  
25 individual Plaintiff and Class member with its vastly superior  
26 financial and legal resources. Requiring each member of the Class  
27 to pursue an individual remedy and would also discourage the  
28 assertion of lawful claims by employees who would be disinclined  
to file an action against their former and/or current employer for  
real and justifiable fear of retaliation and permanent damage to

1 their careers at their current or subsequent employment.

2 27. The prosecution of separate actions by the individual  
3 Class Members, even if possible, would create a substantial risk  
4 of (1) inconsistent or varying adjudications with respect to  
5 individual Class Members against the Defendants and which would  
6 establish potentially incompatible standards of conduct for the  
7 Defendants, and/or (2) adjudications with respect to individual  
8 Class Members which would, as a practical matter, be dispositive  
9 of the interests of the other Class Members not parties to the  
10 adjudications or which would substantially impair or impede the  
11 ability of the Class Members to protect their interests. Further,  
12 the claims of the individual members of the Class are not  
13 sufficiently large to warrant vigorous individual prosecution  
14 considering all of the concomitant costs and expenses.

15 28. Such a pattern, practice and uniform administration of  
16 corporate policy regarding employee compensation as described  
17 herein is unlawful and creates an entitlement to recovery by the  
18 Plaintiffs and the Class, in a civil action, for the unpaid  
19 balance of the full amount of the pay, including interest thereon,  
20 waiting time penalties, reasonable attorney's fees and costs of  
21 suit according to the mandates of California Labor Code sections  
22 218.5 and 1194.

23 29. Proof of a common business practice or pattern, of which  
24 the named Plaintiffs experienced are representative and will  
25 establish the right of each of the members of the Class to  
26 recovery on the causes of action alleged herein.

27 30. The Class is entitled in common to a specific fund with  
28 respect to the wages illegally and unfairly retained by  
Defendants. The Class is entitled in common to restitution and  
disgorgement of those funds being improperly withheld by

1 Defendants. This action is brought for the benefit of the entire  
2 Class and will result in the creation of a common fund.

3 31. There is a well-defined community of interest in the  
4 questions of law and fact involved affecting the parties to be  
5 represented. The questions of law and fact common to the Class  
6 predominate over questions that may affect individual Class  
7 Members, including the following:

8 ...

9 (a) whether Drivers received pay due and owing pursuant  
10 to California Labor Code sections 201, 202, 203, 226.7,  
11 510, 512, and subsections 11 and 12 of the applicable  
12 Industrial Welfare Commission Orders;

13 (b) whether Defendants implemented and engaged in a  
14 systematic business practice of failing to pay "Drivers"  
15 wages according to California law for all hours worked  
16 or whether Defendants automatically deducted 30 minutes  
17 or more from each "Drivers' daily hours worked;

18 (c) whether upon recognizing its legal obligation to pay  
19 wages pursuant to California law to members of the  
20 Class, Defendants paid all wages actually due;

21 (d) whether Defendants failed to keep, maintain or  
22 furnish accurate records of the actual hours worked by  
23 each Driver as required by subsection 7 of the  
24 applicable Industrial Welfare Commission Orders;

25 (e) whether Defendants failed to maintain any other  
26 records and/or other evidence relevant to the claims  
27 asserted in this litigation;

28 (f) whether Defendants willfully failed to pay all wages  
due and owing to all Drivers whose employment with  
Dependants was terminated;

(g) whether the systematic acts and practices of  
Defendants, and each of them, as alleged herein  
violated, inter alia, California Labor Code sections  
201, 202, 203, 226.7, 510, 512, sections 7, 11, and 12,  
of the applicable Industrial Welfare Commission Wage  
Orders, and California Business and Professions Code  
sections 17200, et seq.

32. Because the Representative Plaintiffs and other members  
of the Class in the position of "Driver" routinely worked more  
than four hours without breaks and/or more than five hours without  
a lunch period as required by California Labor Code section 512



1 and subsections 11 and 12 of the applicable Industrial Welfare  
 2 Commission Orders and based upon the uniform duties and  
 3 responsibilities required by Defendants, and each of them, and its  
 4 uniform pay scheme for such employees, the Representative  
 5 Plaintiffs's claims are typical of the claims of the entire Class.

6 33. The Representative Plaintiffs will fairly and adequately  
 7 represent and protect the interests of the Class in that they have  
 8 no disabling conflicts of interest that would be antagonistic to  
 9 the other members of the Class. The Representative Plaintiffs  
 10 have retained counsel who are competent in the prosecution of  
 11 class action litigation, and in overtime wage class action  
 12 litigation.

13 34. The Representative Plaintiffs and members of the Class  
 14 have all similarly suffered irreparable harm and damages as a  
 15 result of Defendants, and each of their, unlawful and wrongful  
 16 conduct. Defendants' systematic failure to retain accurate  
 17 records of hours worked by each "Driver" as required by law makes  
 18 Class treatment especially appropriate. This action will provide  
 19 substantial benefits to both the Class and the public since,  
 20 absent this action, Defendants' unlawful conduct will continue  
 21 unremedied and uncorrected.

#### 22 FIRST CAUSE OF ACTION

23  
 24 (Violation of California Labor Code section 512 and section 11  
 25 of the applicable Industrial Welfare Commission Wage Order.)  
 (Against All Defendants)

26 35. Plaintiffs incorporate by reference the allegations  
 27 contained in Paragraphs 1 through 34 of this Complaint as if fully  
 28 set forth herein.

36. California Labor Code sections 512(a) provide as

1 follows:

2 (a) An employer may not employ an employee for a work  
3 period of more than five hours per day without providing  
4 the employee with a meal period of not less than 30  
5 minutes, except that if the total work period per day of  
6 the employee is no more than six hours, the meal period  
7 may be waived by mutual consent of both the employer and  
8 employee. An employer may not employ an employee for a  
work period of more than 10 hours per day without  
providing the employee with a second meal period of not  
less than 30 minutes. Except that if the total hours  
worked is no more than 12 hours, the second meal period  
may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

9 37. Section 11 of the applicable Industrial Welfare  
10 Commission Wage Order provides as follows:

11 "(A) No employer shall employ any person for a work  
12 period of more than five (5) hours without a meal period  
13 of not less than 30 minutes, except that when a work  
period of not more than six (6) hours will complete the  
day's work the meal period may be waived by mutual  
consent of the employer and the employee.

14 (B) An employer may not employ an employee for a work  
15 period of more than ten (10) hours per day without  
16 providing the employee with a second meal period of not  
less than 30 minutes, except that if the total hours  
worked is no more than 12 hours, the second meal period  
may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

17 (C) unless the employee is relieved of all duty during  
18 a 30 minute meal period, the meal period shall be  
19 considered an "on duty" meal period and counted as time  
20 worked. An "on duty" meal period shall be permitted  
21 only when the nature of the work prevents an employee  
from being relieved of all duty and when by written  
22 agreement between the parties an on-the-job paid meal  
period is agreed to. The written agreement shall state  
23 that the employee may in writing, revoke the agreement  
at any time.

24 (D) If an employer fails to provide an employee a meal  
25 period in accordance with the applicable provisions of  
26 this order, the employer shall pay the employee one (1)  
hour of pay at the employee's regular rate of  
27 compensation for each workday that the meal period is  
not provided."

28 38. California Labor Code section 226.7 provides:

"(a) No employer shall require any employee to work  
during any meal or rest period mandated by an applicable  
order of the Industrial Welfare Commission.



1 (b) If an employer fails to provide an employee a meal  
2 period or rest period in accordance with an applicable  
3 order of the Industrial Welfare Commission, the employer  
4 shall pay the employee one additional hour of pay at the  
5 employee's regular rate of compensation for each work  
6 day that the meal or rest period is not provided."

7 39. It was and continues to be Defendants', and each of  
8 their, systematic business policy and practice work Plaintiffs,  
9 members of the Representative Class, and members of the Class-  
10 Action Class more than five hours per day without an off-duty 30  
11 minute meal period as required by California Labor Code section  
12 512 and section 11 of the applicable Industrial Welfare Commission  
13 Wage Order.

14 40. Furthermore, Plaintiffs, members of the Representative  
15 Class, and members of the Class have not waived their right to a  
16 30 minute meal period by mutual consent.

17 41. In addition, it was and continues to be Defendants', and  
18 each of their, systematic business policy and practice not to  
19 compensate the Plaintiffs, members of the Representative Class or  
20 Class members with the pay due and owing as required by California  
21 Labor Code sections 226.7, and subsection 11 of the applicable  
22 Industrial Welfare Commission Orders (i.e., one hour of pay per  
23 day per lunch period at the employee's regular rate of  
24 compensation).

25 42. Despite all of the available California law, Defendants  
26 and each of them, willfully refused, and continue to refuse, to  
27 compensate Plaintiffs and Class Members with the pay they are owed  
28 pursuant to California Labor Code section 226.7 and subsection 11  
of the applicable Industrial Welfare Commission Orders.

43. In failing to compensate Plaintiffs and the Class  
Members the pay due and owing pursuant to Labor Code sections  
226.7 and subsection 11 of the applicable Industrial Welfare

1 Commission Orders as alleged herein, Defendants, and each of them,  
 2 acted maliciously, oppressively, despicably, with the wrongful  
 3 intention of causing injury and hardship to Plaintiffs and the  
 4 Class Members by reaping economic gain at Plaintiffs' and the  
 5 Class' expense, in willful and conscious disregard of their  
 6 statutory and regulatory right to pay due and owing.  
 7 Consequently, Plaintiffs and the members of the Representative  
 8 Class, and the Class-Action Class are entitled to an award of  
 9 exemplary damages to punish Defendants' past conduct and to deter  
 10 similar future conduct.

11 44. Furthermore, Plaintiffs and Class Members are entitled  
 12 to the relief requested below.

#### 13 SECOND CAUSE OF ACTION

14  
 15 (Violation of California Labor Code section 512 and section 12  
 16 of the applicable Industrial Welfare Commission Wage Order.)  
 (Against All Defendants)

17 45. Plaintiffs incorporate by reference the allegations  
 18 contained in Paragraphs 1 through 44 of this Complaint as if fully  
 19 set forth herein.

20 46. Section 12 of the applicable Industrial Welfare  
 21 Commission Wage Order provides as follows:

22 "(A) Every employer shall authorize and permit all  
 23 employees to take rest periods, which insofar as  
 24 practicable shall be in the middle of each work period:  
 25 The authorized rest period time shall be based on the  
 26 total hours worked daily at the rate of ten (10) minutes  
 27 net rest time per four (4) hours or major fraction  
 thereof. However, a rest period need not be authorized  
 for employees whose total daily work time is less than  
 28 three and one-half (3 ½) hours. Authorized rest period  
 time shall be counted as hours worked for which there  
 shall be no deduction for wages.

(B) if an employer fails to provide an employee a rest  
 period in accordance with the applicable provisions of  
 this order, the employer shall pay the employee one(1)  
 hour of pay at the employee's regular rate of  
 compensation for each workday that the rest period is

1 not provided."

2 47. It was and continues to be Defendants', and each of  
3 their, systematic business policy and practice work Plaintiffs,  
4 members of the Representative Class, and members of the Class-  
5 Action Class members more than three and one half (3 ½) hours per  
6 day without a ten (10) minute rest period as required by  
7 California Labor Code section 512 and section 12 of the applicable  
8 Industrial Welfare Commission Wage Order.

9 48. In addition, it was and continues to be Defendants', and  
10 each of their, systematic business policy and practice not to  
11 compensate the Plaintiffs, members of the Representative Class or  
12 Class with the pay due and owing as required by California Labor  
13 Code sections 226.7, and subsection 12 of the applicable  
14 Industrial Welfare Commission Orders (i.e., one hour of pay per  
15 day per rest period at the employee's regular rate of  
16 compensation).

17 49. Despite all of the available California law, Defendants  
18 and each of them, willfully refused, and continue to refuse, to  
19 compensate Plaintiffs and Class Members with the pay they are owed  
20 pursuant to California Labor Code section 226.7 and subsection 12  
21 of the applicable Industrial Welfare Commission Orders.

22 50. In failing to compensate Plaintiffs and the Class  
23 Members the pay due and owing pursuant to Ca. Labor Code sections  
24 226.7 and subsection 12 of the applicable Industrial Welfare  
25 Commission Orders as alleged herein, Defendants, and each of them,  
26 acted maliciously, oppressively, despicably, with the wrongful  
27 intention of causing injury and hardship to Plaintiffs and the  
28 Class Members by reaping economic gain at Plaintiffs' and the  
Class' expense, in willful and conscious disregard of their

1 statutory and regulatory right to pay due and owing.  
 2 Consequently, Plaintiffs and the members of the Representative  
 3 Class, and the Class-Action Class are entitled to an award of  
 4 exemplary damages to punish Defendants' past conduct and to deter  
 5 similar future conduct.

6 51. Furthermore, Plaintiffs and Class Members are entitled  
 7 to the relief requested below.

8  
 9 THIRD CAUSE OF ACTION

10 (Violation of California Labor Code Section 201, 202,  
 11 and 203)  
 (Against All Defendants)

12 52. Plaintiffs incorporate by reference the allegations  
 13 contained in paragraphs 1 through 51 of this Complaint as if fully  
 14 set forth herein.

15 53. California Labor Code section 201 provides in pertinent  
 16 part: "If an employer discharges an employee, the wages earned  
 17 and unpaid at the time of discharge are due and payable  
 18 immediately ...."

19 54. California Labor Code section 202 provides in pertinent  
 20 part: "If an employee not having a written contract for a definite  
 21 period quits his or her employment, his or her wages shall become  
 22 due and payable not later than 72 hours thereafter, unless the  
 23 employee has given 72 hours previous notice of his or her  
 24 intention to quit, in which case the employee is entitled to his  
 25 or her wages at the time of quitting."

26 55. California Labor Code section 203 provides in pertinent  
 27 part:

28 "If an employer willfully fails to pay, without  
 abatement or reduction, in accordance with Sections 201,  
 201.5, 202, and 205.5, any wages of an employee who is  
 discharged or quit, the wages of the employee shall  
 continue as a penalty from the due date the of at the

1 same rate until paid or until an action therefore is  
 2 commenced; but the wages shall not continue for more  
 3 than 30 days. An employee who secretes or absents  
 4 himself or herself to avoid payment to him or her, or  
 5 who refuses to receive the payment when fully tendered  
 6 to him or her, including any penalty then accrued under  
 7 this section, is not entitled to any benefit under this  
 8 section for the time during which he or she so avoids  
 9 payment.

10 Suit may be filed for these penalties at any time before  
 11 the expiration of the statute of limitations on an action  
 12 for the wages from which the penalties arises."

13 56. Plaintiffs and Class Members identified herein were  
 14 discharged by Defendants and/or voluntarily quit. The Defendants,  
 15 in violation of California Labor Code sections 203, had a  
 16 consistent and uniform policy, practice and procedure of willfully  
 17 failing to pay the earned and unpaid wages or accrued vacation of  
 18 all such former employees as described herein. Plaintiffs and  
 19 Class Members did not secret or absent themselves from Defendants  
 20 nor refuse to accept the earned and unpaid wages from Defendants.  
 21 Accordingly, Defendants are liable for waiting time penalties for  
 22 the unpaid wages pursuant to California Labor Code sections 203.

23 57. In addition to the penalties imposed by California Labor  
 24 Code section 203, Defendants, and each of them are liable for the  
 25 penalties imposed by subsection 20 of the applicable Industrial  
 26 Welfare Commission Orders which provides in relevant part as  
 27 follows:

28 (a) In addition to any other civil penalties provided by  
 law, any employer or any other person acting on behalf  
 of the employer who violates, or causes to violate, the  
 provisions of this order, shall be subject to the civil  
 penalty of: (1) Initial Violation - \$50.00 for each  
 underpaid employee for each pay period during which the  
 employee was underpaid in addition to the amount which  
 is sufficient to recover unpaid wages. (2) Subsequent  
 Violations - \$100.00 for each underpaid employee for  
 each pay period during which the employee was underpaid  
 in addition to an amount which is sufficient to recover  
 unpaid wages.

58. Despite all of the available California law, Defendants  
 and each of them, willfully refused, and continue to refuse, to

1 compensate Plaintiffs and Class Members with the pay they are owed  
 2 pursuant to California Labor Code section 203 and section 20 of  
 3 the applicable Industrial Welfare Commission Orders.

4 59. In failing to compensate Plaintiffs and the Class  
 5 Members the pay due and owing pursuant to Ca. Labor Code section  
 6 203 as alleged herein, Defendants, and each of them, acted  
 7 maliciously, oppressively, despicably, with the wrongful intention  
 8 of causing injury and hardship to Plaintiffs and the Class Members  
 9 by reaping economic gain at Plaintiffs' and the Class' expense, in  
 10 willful and conscious disregard of their statutory and regulatory  
 11 right to pay due and owing. Consequently, Plaintiffs and the  
 12 members of the Representative Class, and the Class-Action Class  
 13 are entitled to an award of exemplary damages to punish  
 14 Defendants' past conduct and to deter similar future conduct.

15 60. Furthermore, Plaintiffs and Class Members are entitled  
 16 to the relief requested below.

17 **FOURTH CAUSE OF ACTION**  
 18 **(Violation of Business and Professions Code 17200 et seq.)**  
 19 **(Against all Defendants)**

20 61. Plaintiffs incorporate by reference the allegations  
 21 contained in paragraphs 1 through 60 of this Complaint as if  
 22 fully set forth herein.

23 62. Defendants, and each of them, have engaged and  
 24 continue to engage in unfair business practices in California by  
 25 practicing, employing and utilizing the employment policy of  
 26 failing to pay Plaintiffs, members of the Representative Class  
 27 and members of the Class-Action Class employment compensation as  
 28 required by the California law cited herein above. Defendants',  
 and each of their, utilization of such unfair business practices  
 constitutes unfair competition and provides an unfair advantage



1 over Defendants' competitors.

2 63. Plaintiffs seek on their own behalf, on behalf of the  
3 Representative Class, and on behalf of the general public, full  
4 restitution and disgorgement of all employment compensation  
5 wrongfully withheld, as necessary and according to proof, to  
6 restore any and all monies withheld, acquired and/or converted  
7 by the Defendants by means of the unfair and/or unlawful  
8 practices complained of herein. The restitution and  
9 disgorgement requested includes all wages earned and unpaid,  
10 including interest thereon. The acts complained of herein  
11 occurred, at least in part, within the last four (4) years  
12 preceding the filing of the Complaint in this action and  
13 continue to the present.

14 64. Plaintiffs are informed and believe and on that basis  
15 allege that at all times herein mentioned Defendants, and each  
16 of them, have engaged in unlawful, deceptive and unfair business  
17 practices, as proscribed by California Business and Professions  
18 Code 17200 et seq., by depriving Plaintiffs and the members of  
19 the Representative Class of the minimum working condition  
20 standards due to them under the California Labor Code and  
21 Industrial Welfare Commission wage orders as identified herein.

22 65. Business and Professions Code 17200, et seq., prohibits  
23 acts of unfair competition which shall mean and include any  
24 unlawful, unfair or fraudulent business act or practice. Under  
25 California law, wages unlawfully withheld from an employee  
26 constitutes an unfair business act entitling the Plaintiffs and  
27 the members of the Representative Class to a restitution remedy  
28 authorized by section 17203. Plaintiffs, the representative  
class, and the general public are therefore entitled to the  
relief requested below.

FIFTH CAUSE OF ACTION

(Failure to Pay Wages Due And Owing. California Labor Code section 510 and subsection 3 of the applicable Industrial Welfare Commission Orders)

66. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. California Labor Code 510 and subsection 3 of the applicable Industrial Welfare Commission Orders provide in relevant part as follows:

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of not less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of not less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of not less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

68. California Labor Code 514 and subsection 3 of the applicable Industrial Welfare Commission Orders provides an exception to the overtime provisions of California Labor Code 510 in relevant part as follows:

Sections 510 and 511 do not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty percent more than the state minimum wage.

69. This cause of action for payment of overtime pursuant to California Labor Code section 510 and subsection 3 of the applicable Industrial Welfare Commission Orders is brought on behalf of Plaintiffs, Representative Class Members and members



1 of the Class who are not exempt by operation of California Labor  
2 Code 514 and the corresponding language in subsection 3 of the  
3 applicable Industrial Welfare Commission Orders.

4 70. During all relevant periods, Defendants, and each of  
5 them, suffered or permitted Plaintiffs, members of the  
6 Representative Class and Class-Action Class Members to work in  
7 excess of eight (8) hours per day and to work in excess of forty  
8 (40) hours per week.

9 71. During all relevant periods, Defendants, and each of  
10 them, suffered or permitted Plaintiffs, the members of the  
11 Representative Class and the members of the Class-Action Class  
12 to work up to fourteen hours per day without a lunch or break  
13 period.

14 72. However, Defendants, and each of them, had and  
15 continue to have a systematic business policy of deducting  
16 thirty (30) minutes from the total time each driver worked each  
17 day and refuse to pay them for the thirty (30) minutes the  
18 drivers were required to devote to work instead of a daily lunch  
19 period.

20 73. Since Defendants, and each of them, deduct the thirty  
21 (30) minutes from the total hours worked by each driver each  
22 day, Defendants, and each of them, have willfully failed and  
23 continue to fail to pay Plaintiffs, members of the  
24 Representative Class and Class-Action Class Members, who are not  
25 exempt by operation of California Labor Code section 514 and the  
26 corresponding language in subsection 3 of the applicable  
27 Industrial Welfare Commission Orders, 2.5 hours of overtime for  
28 each five day work week and 3.0 hours of overtime for each six  
day work.

74. Despite all of the available California law,

1 Defendants and each of them, willfully refused, and continue to  
 2 refuse, to pay Plaintiffs and Class Members the pay they are  
 3 owed.

4 75. In failing to compensate Plaintiffs and the Class  
 5 Members for the wages due and owing pursuant to California Labor  
 6 Code section 510 as alleged herein, Defendants, and each of  
 7 them, acted maliciously, oppressively, despicably, with the  
 8 wrongful intention of causing injury and hardship to Plaintiffs  
 9 and the Class Members by reaping economic gain at Plaintiffs'  
 10 and the Class' expense, in willful and conscious disregard of  
 11 their statutory and regulatory right to overtime compensation.  
 12 Consequently, Plaintiffs and the members of the Class-Action  
 13 Class are entitled to an award of exemplary damages to punish  
 14 Defendants' past conduct and to deter similar future conduct.

15 76. Furthermore, Plaintiffs and Class Members are entitled  
 16 to the relief requested below.

#### 17 SIXTH CAUSE OF ACTION

18 (Failure To Provide Accurate Wage Statements. California Labor  
 19 Code 226, And Subsections of the applicable  
 Industrial Welfare Commission Orders.)

20 77. Plaintiffs incorporate by reference the allegations  
 21 contained in paragraphs 1 through 76 of this Complaint as if  
 22 fully set forth herein.

23 78. California Labor Code 226 provides:

24 226. Itemized statements; contents; records; inspection  
 25 of records; compliance with inspection request;  
 limitation of application

26 (a) Every employer shall, semimonthly or at the time of  
 27 each payment of wages, furnish each of his or her  
 employees, either as a detachable part of the check,  
 draft, or voucher paying the employee's wages, or  
 28 separately when wages are paid by personal check or  
 cash, an accurate itemized statement in writing showing  
 (1) gross wages earned, (2) total hours worked by the  
 employee, except for any employee whose compensation is  
 solely based on a salary and who is exempt from payment  
 of overtime under subdivision (a) of Section 515 or any

1 applicable order of the Industrial Welfare Commission,  
 2 (3) the number of piece-rate units earned and any  
 3 applicable piece rate if the employee is paid on a piece  
 4 rate basis, (4) all deductions, provided that all  
 5 deductions made on written orders of the employee may be  
 6 aggregated and shown as one item, (5) net wages earned,  
 7 (6) the inclusive dates of the period for which the  
 8 employee is paid, (7) the name of the employee and his  
 9 or her social security number, except that by January 1,  
 10 2008, only the last four digits of his or her social  
 11 security number or an existing employee identification  
 12 number other than a social security number may be shown  
 13 on the check, (8) the name and address of the legal  
 14 entity that is the employer, and (9) all applicable  
 15 hourly rates in effect during the pay period and the  
 16 corresponding number of hours worked at each hourly rate  
 17 by the employee. The deductions made from payments of  
 18 wages shall be recorded in ink or other indelible form,  
 19 properly dated, showing the month, day, and year, and a  
 20 copy of the statement or a record of the deductions  
 21 shall be kept on file by the employer for at least three  
 22 years at the place of employment or at a central  
 23 location within the State of California.

(b) An employer that is required by this code or any  
 regulation adopted pursuant to this code to keep the  
 information required by subdivision (a) shall afford  
 current and former employees the right to inspect or  
 copy the records pertaining to that current or former  
 employee, upon reasonable request to the employer. The  
 employer may take reasonable steps to assure the  
 identity of a current or former employee. If the  
 employer provides copies of the records, the actual cost  
 of reproduction may be charged to the current or former  
 employee.

(c) An employer who receives a written or oral request  
 to inspect or copy records pursuant to subdivision (b)  
 pertaining to a current or former employee shall comply  
 with the request as soon as practicable, but no later  
 than 21 calendar days from the date of the request. A  
 violation of this subdivision is an infraction. A  
 impossibility of performance, not caused by or a result  
 of a violation of law, shall be an affirmative defense  
 for an employer in any action alleging a violation of  
 this subdivision. An employer may designate the person  
 to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any  
 person employed by the owner or occupant of a residen-  
 tial dwelling whose duties are incidental to the  
 ownership, maintenance, or use of the dwelling,  
 including the care and supervision of children, or whose  
 duties are personal and not in the course of the trade,  
 business, profession, or occupation of the owner or  
 occupant.

(e) An employee suffering injury as a result of a  
 knowing and intentional failure by an employer to comply  
 with subdivision (a) is entitled to recover the greater

1 of all actual damages or fifty dollars (\$50) for the  
2 initial pay period in which a violation occurs and one  
3 hundred dollars (\$100) per employee for each violation  
4 in a subsequent pay period, not exceeding an aggregate  
5 penalty of four thousand dollars (\$4,000), and is  
6 entitled to an award of costs and reasonable attorney's  
7 fees.

8 (f) A failure by an employer to permit a current or  
9 former employee to inspect or copy records within the  
10 time set forth in subdivision (c) entitles the current or  
11 former employee or the Labor Commissioner to recover a  
12 seven hundred fifty dollars (\$750) penalty from the  
13 employer.

14 (g) An employee may also bring an action for injunctive  
15 relief to ensure compliance with this section, and is  
16 entitled to an award of costs and reasonable attorney's  
17 fees.

18 79. Defendants have failed to maintain the records  
19 required by Labor Code §226. Consequently, it will be more  
20 difficult for Plaintiffs and Class Members to establish all  
21 actual hours worked for Defendant over the four years  
22 preceding the filing of this complaint. As a result,  
23 Plaintiffs and class members will incur additional attorney  
24 fees and costs and will be required to devote significantly  
25 more time to this litigation.

26 80. Accordingly, Plaintiffs and Class Members may be  
27 prejudiced in their ability to establish the total amount of  
28 their actual damages.

81. Therefore, Plaintiffs and Class Members seek the  
remedy set forth in California Labor Code §226(e).

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SEVENTH CAUSE OF ACTION

(Failure to Pay Minimum Wage As Required By  
Subsection 4 Of The Applicable Industrial  
Welfare Commission Orders.)  
(Against WAL-MART STORES, INC., and Does 1-50.)

81. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 80 of this Complaint as if fully set forth herein.

82. Subsection 4 of the applicable Industrial Welfare Commission Orders provides in relevant part as follows:

(a) Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 2002, ... (b) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

83. During all relevant periods, Defendants, and each of them, suffered or permitted Plaintiffs, members of the Representative Class and Class-Action Class Members to work in excess of eight (8) hours per day and to work in excess of forty (40) hours per week.

84. During all relevant periods, Defendants, and each of them, required Plaintiff, members of the Representative Class and Class-Action Class Members to work unpaid hours.

85. However, Defendants, and each of them, had and continue to have a systematic business policy and practice of refusing to pay them for all time they were required to devote to work.

86. Defendants, and each of them, have willfully failed and continue to fail to pay Plaintiffs, members of the Representative Class and Class-Action Class Members minimum wage.

1 87. It was and continues to be Defendants', and each of  
 2 their, systematic business policy and practice to not pay  
 3 minimum wage as required by California law and as alleged  
 4 herein.

5 88. Despite all of the available California law,  
 6 Defendants and each of them, willfully refused, and continue to  
 7 refuse, to compensate Plaintiffs and Class Members with the pay  
 8 they are owed pursuant to subsection 4 of the applicable  
 9 Industrial Welfare Commission Orders.

10 89. In failing to compensate Plaintiffs and the Class  
 11 Members the pay due and owing as alleged herein, Defendants,  
 12 and each of them, acted maliciously, oppressively, despicably,  
 13 with the wrongful intention of causing injury and hardship to  
 14 Plaintiff and the Class Members by reaping economic gain at  
 15 Plaintiff's and the Class' expense, in willful and conscious  
 16 disregard of their statutory and regulatory right to receive pay  
 17 due and owing. Consequently, Plaintiff, members of the  
 18 Representative Class and Class-Action Class Members are entitled  
 19 to an award of exemplary damages to punish Defendants' past  
 20 conduct and to deter similar future conduct.

21  
 22 90. Furthermore, Plaintiffs and Class Members are entitled  
 23 to the relief requested below.

24 **PLAINTIFFS REQUEST JURY TRIAL**

25 **PRAYER FOR RELIEF**

26  
 27 **WHEREFORE,** Plaintiffs pray for judgment and relief as  
 28 follows:

1. An Order certifying that the action may be maintained  
 as a class action;



1       2. Compensatory and statutory damages, penalties and  
2 restitution, as appropriate and available under each cause of  
3 action, in an amount to be proven at trial;

4       3. Exemplary and punitive damages, as appropriate and  
5 available under each cause of action, pursuant to California  
6 Civil Code section 3294;

7       4. An Order imposing an asset freeze in constructive trust  
8 of Defendants, and each of their, ill-gotten gains, and  
9 enjoining Defendants from failing and refusing to disgorge all  
10 monies acquired by means of any act or practice declared by this  
11 Court to constitute unlawful, unfair or fraudulent acts or  
12 practices;

13       5. That Defendants be ordered to show cause why it should  
14 not be enjoined and ordered to comply the applicable California  
15 Industrial Welfare Commission Wage Orders related to payment of  
16 employment compensation and record keeping for Defendants'  
17 employees who are engaged in non-exempt work and work, without  
18 a meal or break period;

19       6. For a declaratory judgment and decree adjudging and  
20 decreeing that the Plaintiffs and the Class have meal periods  
21 and break periods for which they have not been paid in violation  
22 of California Law;

23       7. For restitution to Plaintiffs and other similarly  
24 affected members of the general public (and disgorgement from  
25 Defendants) of all funds unlawfully acquired by Defendants by  
26 means of any acts or practices declared by this Court to be  
27 violative of the California Labor Code, Industrial Welfare  
28 Commission Orders, and California Business and Professions Code  
17200 et seq.

      8. For any and all profits, whether direct or indirect,

1 Defendants acquired by its conversion of the Plaintiffs' and  
2 Class Members' wages;

3 9. For pre-judgment and post-judgment interest as allowed  
4 by California Labor Code sections 218.6 and 1194;

5 10. For reasonable attorney's fees, expenses and costs as  
6 provided by California Labor Code sections 218.5 and 1194; and

7 11. Such other and further relief as the Court deems just  
8 and proper.

9 DATED: October 9 2008

LAW OFFICES OF  
WAGNER & JONES LLP

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Andrew B. Jones  
Attorneys for Plaintiffs



Superior Court of California, County of Alameda  
Gale / Schenone Hall of Justice  
Civil Division  
5672 Stoneridge Drive  
Pleasanton, CA 94588

To: Donald C. Bryan

Date: 10/10/2008

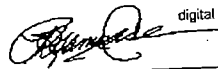
Re: No. RG08414583 - Bryan VS. Wal-Mart Stores, Inc., a Delaware Corporation

Your request to file Summons Issued and Filed has been rejected for the following reason:

(Direct Fax Return) Names must match exactly to complaint.

Executive Officer / Clerk of the Superior Court

By

 digital

Deputy Clerk

Wagner & Jones LLP  
 Attn: Jones, Andrew B  
 1111 East Herndon  
 Ste. 317  
 Fresno, CA 93720

Wal-Mart Stores, Inc., a Delaware  
 Corporation

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

Bryan

Plaintiff/Petitioner(s)

VS.

Wal-Mart Stores, Inc., a Delaware Corporation

Defendant/Respondent(s)

(Abbreviated Title)

No. RG08414583

**NOTICE OF HEARING**

To each party or to the attorney(s) of record for each party herein:  
 Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing  
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and  
 time noted below:

**Complex Determination Hearing:**

DATE: 11/24/2008 TIME: 02:00 PM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

**Case Management Conference:**

DATE: 01/09/2009 TIME: 11:00 AM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 4.2 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 20 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6936. Please consult Appendix E to Local Rules 4 and 5 of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be

scheduled for hearing in Department 20.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at Dept.20@alameda.courts.ca.gov or by phone at (510) 267-6936.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 10/17/2008

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 10/17/2008.

By



Deputy Clerk

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Andrew B. Jones (076915) Law Offices of Wagner & Jones 1111 E. Herndon Suite 317 Fresno, CA 93720  TELEPHONE NO.: 559.449-1800 FAX NO. (Optional): 559.449-0749 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA. 94612 BRANCH NAME: PLAINTIFF/PETITIONER: Bryan, et al. DEFENDANT/RESPONDENT: Wal Mart, et al.		FOR COURT USE ONLY  <b>FILED BY FAX</b> <b>ALAMEDA COUNTY</b> <b>October 27, 2008</b>  <b>CLERK OF</b> <b>THE SUPERIOR COURT</b> By Rosanne Case, Deputy  <b>CASE NUMBER:</b> <b>RG08414583</b>  CASE NUMBER: RG08414583  Ref. No. or File No.:
<b>PROOF OF SERVICE OF SUMMONS</b> (Separate proof of service is required for each party served.)		

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
  - ☒ summons
  - ☒ complaint
  - ☐ Alternative Dispute Resolution (ADR) package
  - ☒ Civil Case Cover Sheet (served in complex cases only)
  - ☐ cross-complaint
  - ☐ other (specify documents):

- Party served (specify name of party as shown on documents served): Wal-Mart Stores, Inc, a Delaware Corporation dba Wal-Mart Transportation LLC
  - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
Margerite Wilson: Agent for service of process

- Address where the party was served: 818 W. Seventh Street  
Los Angeles, CA. 90017

- I served the party (check proper box)
  - ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 10-21-08 (2) at (time): 2:26 p.m.  
I left the documents listed in item 2 with or
  - ☐ by substituted service. On (date): at (time):  
in the presence of (name and title or relationship to person indicated in item 3):

- (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or I attach a declaration of mailing is attached.
- I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Bryan, et al.	CASE NUMBER: RG08414583
DEFENDANT/RESPONDENT: Wal Mart, et al.	

5. c. | | by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date):
- (2) from (city):
- (3) | | with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) | | to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. | | by other means (specify means of service and authorizing code section):

| | Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. | | as an individual defendant.
- b. | | as the person sued under the fictitious name of (specify):
- c. | | as occupant.
- d. | X | On behalf of (specify): wal-mart Stores Inc., a Delaware corporation dba Wal-Mart Transportatin, LLC

under the following Code of Civil Procedure section:

- |  |  |
|--|--|
| X   416.10 (corporation)                 | 415.95 (business organization, form unknown) |
| 416.20 (defunct corporation)             | 416.60 (minor)                               |
| 416.30 (joint stock company/association) | 416.70 (ward or conservatee)                 |
| 416.40 (association or partnership)      | 416.80 (authorized person)                   |
| 416.50 (public entity)                   | 415.46 (occupant)                            |
|  | other:                                       |

7. Person who served papers

- a. Name: FRESNO ATTORNEY SERVICE/Ryan Price
- b. Address: 6083 N. Figarden Drive, PMB 187, Fresno, CA. 93722
- c. Telephone number: 559.375-2804
- d. The fee for service was: \$ 78.00
- e. I am:

- (1) | | not a registered California process server.
- (2) | | exempt from registration under Business and Professions Code section 22350(b).
- (3) | X | registered California process server:
- (i) | | owner | | employee [X] independent contractor.
- (ii) Registration No.: 2126
- (iii) County: Orange

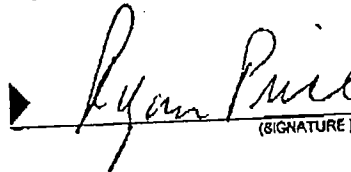
8. | X | I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. | | I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 10-21-08

Ryan Price  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)

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ALAMEDA COUNTY

November 03, 2008

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, DeputyCASE NUMBER:  
RG08414583

1 LAW OFFICES OF  
2 WAGNER & JONES LLP  
3 Andrew B. Jones, #076915  
4 Nicholas Wagner, #109455  
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6 1111 East Herndon, Suite 317  
7 Fresno, California 93720  
8 559/449-1800

5 Attorney for Plaintiffs DONALD C. BRYAN, VIRGIL CALDWELL,  
6 CARROLL HAMPTON, and ROBERT RODRIGUEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

9 DONALD C. BRYAN, VIRGIL  
10 CALDWELL, CARROLL HAMPTON, and  
11 ROBERT RODRIGUEZ

Plaintiffs,

vs.

13 WAL-MART STORES, INC., a  
14 Delaware Corporation dba WAL-  
15 MART TRANSPORTATION LLC,  
16 JEFFREY HAMMOND, and DOES 1-  
17 50, inclusive,

Defendants.

Case No. RG08414583

CLASS ACTION

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND EQUITABLE RELIEF

1. VIOLATION OF LABOR CODE  
SECTIONS 226.7 AND 512  
AND SECTION 11 OF THE  
INDUSTRIAL WELFARE  
COMMISSION WAGE ORDERS.  
(FAILURE TO PROVIDE A  
MEAL PERIOD.)
2. VIOLATION OF LABOR CODE  
SECTIONS 226.7 AND 512  
AND SECTION 12 OF THE  
INDUSTRIAL WELFARE  
COMMISSION WAGE ORDERS.  
(FAILURE TO PROVIDE A  
REST PERIOD.)
3. VIOLATION OF LABOR CODE  
203 (FAILURE TO PAY  
WAGES DUE AND OWING UPON  
TERMINATION OF  
EMPLOYMENT.)
4. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE 17200 ET  
SEQ.
5. FAILURE TO PAY WAGES DUE  
AND OWING (CA LABOR CODE  
510)
6. FAILURE TO PROVIDE  
ACCURATE WAGE STATEMENTS  
(Ca. Labor Code 226)
7. FAILURE TO PAY MINIMUM  
WAGE

JURY TRIAL DEMANDED

I



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GENERAL ALLEGATIONS COMMON TO EACH CAUSE OF ACTION

Representative Plaintiffs, DONALD C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON, and ROBERT RODRIGUEZ, bring this challenge to Defendants lucrative, repressive and unlawful business practices on behalf of themselves and on behalf of all other members of the general public similarly situated, and hereby allege and state as follows:

1. This is a class action brought against Defendants, and each of them, on behalf of a collective class of all persons employed by Defendants, and each of them, in the position of "Driver" in the State of California (or persons with the equivalent position however titled) who were not provided meal and rest periods and who were not paid wages pursuant to California law prior and subsequent to the date this action was filed.

2. This action alleges that Defendants, and each of them: (1) improperly and in violation of California state law failed to pay wages and penalties due and owing to its "Drivers" in violation of California Labor Code sections 201, 202, 203, 226.7, 510 and 512, and sections 11, and 12 of the applicable California Industrial Welfare Commission Orders; and, (2) violated California Business and Professions Code 17200, et. seq., all in conscious disregard of the Plaintiffs' and the Class members' rights, entitling Plaintiffs and the Class to an award of punitive damages.

3. This action seeks relief for the unremedied violations of California law including, inter alia:

(a) damages and/or restitution, as appropriate, to Plaintiffs and to the Class Members, who have not been paid wages as required by California law and/or whose records of hours worked have not been maintained or furnished, have been inaccurately maintained or have been altered or destroyed, including exemplary damage where and if appropriate;

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1 (b) an order requiring disgorgement from Defendants, and  
2 each of them, of all monies wrongfully withheld,  
including interest, as a result of the practices alleged  
herein;

3 (c) implementation of other equitable and injunctive  
4 relief, including inter alia, an injunction prohibiting  
5 Defendants, and each of them, from (1) failing to pay  
6 wages to "Drivers" as required under California Labor  
Code sections 201, 202, 203, 226, 226.7, 510, 512, and  
subsections 11 and 12 of the applicable Industrial  
Welfare Commission Orders;

7 (d) interest;

8 (e) attorney fees and costs as provided by statute  
9 and/or applicable case law including California Labor  
Code sections 218.5 and 1194;

10 (f) such other relief as the court deems just and proper.

11 4. This class-action lawsuit for damages and equitable  
12 relief is founded exclusively upon California state law including,  
13 but not limited to, violations of provisions of the California  
14 Labor Code, Industrial Welfare Commission Wage Orders, and the  
15 California Business and Professions Code.

16 5. Venue is proper in Alameda County because Defendants own  
17 and operate business facilities in Alameda County where Defendants  
18 have failed to pay Plaintiffs and Class Members wages in violation  
19 of California law. Plaintiffs and the Class Members have suffered  
20 damages in Alameda County and will continue to suffer the same  
21 harm as the Representative Plaintiffs as a result of Defendants,  
22 and each of their wrongful conduct unless the relief requested  
23 herein is granted.

24 6. Defendants, and each of them, at all relevant times  
25 herein are duly organized and existing as entities under and by  
26 virtue of law, authorized to do and doing business in the County  
27 of Alameda, and the State of California. Defendant, JEFFREY  
28 HAMMOND, General Manager of Defendant, WAL-MART STORES, is a  
resident of Fresno County, an a citizen of the State of

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1 California.

2 7. Plaintiffs and Class Members were and are employed as  
3 "Drivers" (or the equivalent) by Defendants, and each of them, and  
4 work in various other counties in the State of California. The  
5 majority of the Class are citizens of the State of California.

6 8. Plaintiff, DONALD C. BRYAN, is a resident of Kings  
7 County, California and a citizen of the State of California. Mr.  
8 BRYAN has been employed by Defendant, and each of them, as a  
9 Driver from April 1993 to November 2007. He joins this action in  
10 his individual capacity on behalf of himself, and on behalf of all  
11 other Delivery Drivers similarly situated pursuant to California  
12 Code of Civil Procedure section 382, and pursuant to California  
13 Business and Professions Code 17200 et. seq., on behalf of the  
14 general public.

15 9. Plaintiff, VIRGIL CALDWELL, is a resident of Fresno County  
16 and is a citizen of the State of California. Mr. CALDWELL has  
17 been employed by Defendant, and each of them as a Driver from  
18 August 1994 to September 2006. He joins this action in his  
19 individual capacity on behalf of himself, and on behalf of all  
20 other Delivery Drivers similarly situated pursuant to California  
21 Code of Civil Procedure section 382, and pursuant to California  
22 Business and Professions Code 17200 et. seq., on behalf of the  
23 general public.

24 10. Plaintiff, CARROLL HAMPTON is a resident of Fresno  
25 County and is a citizen of the State of California. Mr. HAMPTON  
26 has been employed by Defendant, and each of them as a Driver from  
27 August 1994 to January 31, 2008. He joins this action in his  
28 individual capacity on behalf of himself, and on behalf of all  
other Delivery Drivers similarly situated pursuant to California  
Code of Civil Procedure section 382, and pursuant to California

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1 Business and Professions Code 17200 et. seq., on behalf of the  
2 general public.

3 11. Plaintiff, ROBERT RODRIGUEZ is a resident of Tulare  
4 County and is a citizen of the State of California. He has been  
5 employed by Defendant, and each of them as a Driver from April  
6 1992 to the present. Mr. RODRIGUEZ joins this action in his  
7 individual capacity on behalf of himself, and on behalf of all  
8 other Delivery Drivers similarly situated pursuant to California  
9 Code of Civil Procedure section 382, and pursuant to California  
10 Business and Professions Code 17200 et. seq., on behalf of the  
11 general public.

12 12. Plaintiffs are informed and believe and thereupon allege  
13 that Defendants, and each of them, are at all time relevant  
14 hereto, persons, residing in various counties in the State of  
15 California.

16 13. Plaintiffs are further informed and believe and thereupon  
17 allege that at all relevant times herein such DOE 1-20 Defendants,  
18 were managing agents of Defendants, and each of them, with policy  
19 making authority to set wages, hire, fire, discipline employees,  
20 and with supervisory control over Plaintiffs and Class members.

21 14. The true names and capacities of the Defendants sued  
22 herein as DOES 1 through 50, inclusive, whether individual,  
23 corporate, associate or otherwise, are unknown to Plaintiffs, who  
24 therefore sues such Defendants by their fictitious names pursuant  
25 to California Code of Civil Procedure section 474. Plaintiffs are  
26 informed and believe that each of the Doe Defendants are liable to  
27 Plaintiffs under the same theories and causes of action as set  
28 forth in this complaint. Plaintiffs are informed and believe and  
thereon allege that the DOE Defendants are California residents.  
Plaintiffs will amend this complaint to show such true names and

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1 capacities when the same have been ascertained.

2 15. Plaintiffs are informed and believe and thereon allege  
3 that each of the Defendants identified herein was at all times  
4 relevant hereto the agent, employee, servant, representative or  
5 alter ego of the remaining Defendants, and was acting, at least in  
6 part, within the course and scope of such relationship.

7 16. At all times mentioned, Defendants, and each of them,  
8 were members of, and engaged in, a joint venture, partnership and  
9 common enterprise, and acting within the course and scope of, and  
10 in pursuit of, said joint venture, partnership and common  
11 enterprise.

12 17. At all times herein mentioned, Defendants, and each of  
13 them, ratified each and every act or omission complained of  
14 herein. At all times mentioned, the Defendants, and each of them,  
15 aided and abetted the acts and omissions of each and all of the  
16 other Defendants and proximately caused the damages as alleged  
17 herein.

18 18. Defendants, and each of them, through their agents and  
19 employees (not including the Plaintiffs, members of the  
20 "Collective Class", or "Class-Action Class" (members)),  
21 established and carried out a policy which violated California  
22 Labor Code sections 201, 202, 203, 226.7, 510 and 512, and  
23 Subsections 11, and 12 of the applicable Industrial Welfare  
24 Commission Orders in that Plaintiffs, members of the Collective  
25 Class, and Class-Action Class members were not paid wages  
26 according to California law for hours that they were required to  
27 work including, but not limited to, hours devoted to the  
28 following: (1) work during their statutory lunch or break periods;  
(2) work during which Defendants, and each of them, automatically  
deducted 30 minutes or more from their daily hours worked; and (3)

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1 work during which they were engaged to wait (standby time).

2 19. As a result of the actions of Defendants, and each of  
3 them, Plaintiffs, members of the Collective Class, and Class-  
4 Action Class members suffered damages, including, but not limited  
5 to, lost pay, wages, benefits, vacation pay, and interest.

6 20. These violations of law were committed knowingly and  
7 willfully by Defendants, and each of them, with full knowledge of  
8 the required laws cited herein.

9 21. The actions of Defendants, and each of them, were  
10 therefore fraudulent, malicious, and oppressive and as such  
11 Plaintiffs, the Collective Class and the Class-Action Class  
12 members are entitled to an award of punitive damages by way of  
13 example and deterrence.

14 22. The duties and responsibilities of the "Drivers" are  
15 virtually identical from region to region, area to area, store to  
16 store and employee to employee within the State of California.  
17 Further, any variation in job activities between the different  
18 individuals are legally insignificant to the issues presented by  
19 this action since the central facts remain, to wit, Plaintiffs and  
20 the Representative Class and Class-Action Class Members performed  
21 nonexempt work for which they have never been paid the wages  
22 earned as required by California law.

23 23. Some of the Class Members were involuntarily discharged  
24 by Defendants, constructively terminated or voluntarily terminated  
25 their employment, and did not receive all pay due and owing at the  
26 time their employment with Defendants, and each of the, was  
27 terminated. Defendants, in violation of California Labor Code  
28 sections 201, 202, and 203 had a consistent uniform policy,  
practice and procedure of willfully failing to pay the earned and  
wages of all such former employees. The Defendants willfully



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1 failed to pay the earned and unpaid wages of such individuals,  
2 including, but not limited to, meal time, break time, and time  
3 devoted to work which Defendants, and each of them, automatically  
4 deducted from their daily hours worked. The Defendants willfully  
5 failed to pay the earned and unpaid wages of such individuals,  
6 including, but not limited to, timely payment of accrued vacation  
7 on termination of employment. Members of the Collective Class and  
8 members of the Class-Action Class did not secret or absent  
9 themselves from Defendants nor did they refuse to accept the  
10 earned but unpaid wages from Defendants. Accordingly, Defendants  
11 are liable for waiting time penalties for the unpaid wages  
12 pursuant to California Labor Code sections 201, 202, and 203.

## II

CLASS ACTION ALLEGATIONS

14  
15 24. This complaint is brought by Representative Plaintiffs,  
16 DONALD C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON, and ROBERT  
17 RODRIGUEZ, pursuant to California Code of Civil Procedure section  
18 382 on behalf of the Class. All claims alleged herein arise  
19 exclusively under California law for which Representative  
20 Plaintiffs seek the relief authorized under California law. The  
21 class is comprised of, and defined as, all current and former  
22 California-based, "Drivers" or persons in an equivalent position  
23 or performing equivalent job duties however titled, who worked  
24 and/or are working for Defendants, and each of them, within four  
25 years prior to the filing of the original Complaint in this action  
26 up to and including the resolution of this action, yet were not  
27 paid wages in violation of California Labor Code sections 201,  
28 202, 203, 226.7, 510 and 512 and subsections 11, and 12 of the  
applicable Industrial Welfare Commission Orders.

25. The members of the Class are so numerous that joinder of

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1 all members would be impractical, if not impossible. The identity  
2 of each members of the Class is readily ascertainable by review of  
3 Defendant's own business records, including but not limited to,  
4 records required by subsection 7 of the applicable Industrial  
5 Welfare Commission Orders and California Labor Code sections 1174.  
6 Further, the subject matter of this action both as to factual  
7 matters and as to matters of law, is such that there are questions  
8 of law and fact common to the Class which predominate over  
9 questions affecting only individual members.

10 26. The California Labor Code and Industrial Welfare  
11 Commission Wage Order provisions upon which Representative  
12 Plaintiffs base their claims are broadly remedial in nature.  
13 These laws and labor standards serve an important public interest  
14 in establishing minimum working conditions and standards in  
15 California. These laws and labor standards protect the average  
16 working employee from exploitation by employers who may seek to  
17 take advantage of superior economic and bargaining power in  
18 setting onerous terms and conditions of employment. The nature of  
19 this action and the format of laws available to Representative  
20 Plaintiff and the Class make the class action format a  
21 particularly efficient and appropriate procedure to redress the  
22 wrongs alleged herein. Further, this case involves a large  
23 corporate employer and a large number of individual employees with  
24 many relatively small claims. If each employee were required to  
25 file an individual lawsuit, the corporate Defendants would  
26 necessarily gain an unconscionable advantage since they would be  
27 able to exploit and overwhelm the limited resources of each  
28 individual Plaintiff and Class member with its vastly superior  
financial and legal resources. Requiring each member of the Class  
to pursue an individual remedy and would also discourage the

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1 assertion of lawful claims by employees who would be disinclined  
2 to file an action against their former and/or current employer for  
3 real and justifiable fear of retaliation and permanent damage to  
4 their careers at their current or subsequent employment.

5 27. The prosecution of separate actions by the individual  
6 Class Members, even if possible, would create a substantial risk  
7 of (1) inconsistent or varying adjudications with respect to  
8 individual Class Members against the Defendants and which would  
9 establish potentially incompatible standards of conduct for the  
10 Defendants, and/or (2) adjudications with respect to individual  
11 Class Members which would, as a practical matter, be dispositive  
12 of the interests of the other Class Members not parties to the  
13 adjudications or which would substantially impair or impede the  
14 ability of the Class Members to protect their interests. Further,  
15 the claims of the individual members of the Class are not  
16 sufficiently large to warrant vigorous individual prosecution  
17 considering all of the concomitant costs and expenses.

18 28. Such a pattern, practice and uniform administration of  
19 corporate policy regarding employee compensation as described  
20 herein is unlawful and creates an entitlement to recovery by the  
21 Plaintiffs and the Class, in a civil action, for the unpaid  
22 balance of the full amount of the pay, including interest thereon,  
23 waiting time penalties, reasonable attorney's fees and costs of  
24 suit according to the mandates of California Labor Code sections  
25 218.5 and 1194.

26 29. Proof of a common business practice or pattern, of which  
27 the named Plaintiffs experienced are representative and will  
28 establish the right of each of the members of the Class to  
recovery on the causes of action alleged herein.

30. The Class is entitled in common to a specific fund with

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1 respect to the wages illegally and unfairly retained by  
2 Defendants. The Class is entitled in common to restitution and  
3 disgorgement of those funds being improperly withheld by  
4 Defendants. This action is brought for the benefit of the entire  
5 Class and will result in the creation of a common fund.

6 31. There is a well-defined community of interest in the  
7 questions of law and fact involved affecting the parties to be  
8 represented. The questions of law and fact common to the Class  
9 predominate over questions that may affect individual Class  
10 Members, including the following:

11 ...

12 (a) whether Drivers received pay due and owing pursuant  
13 to California Labor Code sections 201, 202, 203, 226.7,  
14 510, 512, and subsections 11 and 12 of the applicable  
Industrial Welfare Commission Orders;

15 (b) whether Defendants implemented and engaged in a  
16 systematic business practice of failing to pay "Drivers"  
wages according to California law for all hours worked  
or whether Defendants automatically deducted 30 minutes  
or more from each "Drivers' daily hours worked;

17 (c) whether upon recognizing its legal obligation to pay  
18 wages pursuant to California law to members of the  
Class, Defendants paid all wages actually due;

19 (d) whether Defendants failed to keep, maintain or  
20 furnish accurate records of the actual hours worked by  
each Driver as required by subsection 7 of the  
21 applicable Industrial Welfare Commission Orders;

22 (e) whether Defendants failed to maintain any other  
23 records and/or other evidence relevant to the claims  
asserted in this litigation;

24 (f) whether Defendants willfully failed to pay all wages  
25 due and owing to all Drivers whose employment with  
Defendants was terminated;

26 (g) whether the systematic acts and practices of  
27 Defendants, and each of them, as alleged herein  
violated, inter alia, California Labor Code sections  
201, 202, 203, 226.7, 510, 512, sections 7, 11, and 12,  
28 of the applicable Industrial Welfare Commission Wage  
Orders, and California Business and Professions Code  
sections 17200, et seq.

32. Because the Representative Plaintiffs and other members

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1 of the Class in the position of "Driver" routinely worked more  
2 than four hours without breaks and/or more than five hours without  
3 a lunch period as required by California Labor Code section 512  
4 and subsections 11 and 12 of the applicable Industrial Welfare  
5 Commission Orders and based upon the uniform duties and  
6 responsibilities required by Defendants, and each of them, and its  
7 uniform pay scheme for such employees, the Representative  
8 Plaintiffs's claims are typical of the claims of the entire Class.

9 33. The Representative Plaintiffs will fairly and adequately  
10 represent and protect the interests of the Class in that they have  
11 no disabling conflicts of interest that would be antagonistic to  
12 the other members of the Class. The Representative Plaintiffs  
13 have retained counsel who are competent in the prosecution of  
14 class action litigation, and in overtime wage class action  
15 litigation.

16 34. The Representative Plaintiffs and members of the Class  
17 have all similarly suffered irreparable harm and damages as a  
18 result of Defendants, and each of their, unlawful and wrongful  
19 conduct. Defendants' systematic failure to retain accurate  
20 records of hours worked by each "Driver" as required by law makes  
21 Class treatment especially appropriate. This action will provide  
22 substantial benefits to both the Class and the public since,  
23 absent this action, Defendants' unlawful conduct will continue  
24 unremedied and uncorrected.

25 ///

26 ///

27 ///

28 ///

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FIRST CAUSE OF ACTION

(Violation of California Labor Code section 512 and section 11 of the applicable Industrial Welfare Commission Wage Order.)  
(Against WAL-MART STORES, INC,  
dba WAL-MART TRANSPORTATION, LLC)

35. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. California Labor Code sections 512(a) provide as follows:

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

37. Section 11 of the applicable Industrial Welfare Commission Wage Order provides as follows:

"(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state



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1 that the employee may in writing, revoke the agreement  
2 at any time.

3 (D) If an employer fails to provide an employee a meal  
4 period in accordance with the applicable provisions of  
5 this order, the employer shall pay the employee one (1)  
hour of pay at the employee's regular rate of  
compensation for each workday that the meal period is  
not provided."

6 38. California Labor Code section 226.7 provides:

7 "(a) No employer shall require any employee to work  
8 during any meal or rest period mandated by an applicable  
order of the Industrial Welfare Commission.

9 (b) If an employer fails to provide an employee a meal  
10 period or rest period in accordance with an applicable  
11 order of the Industrial Welfare Commission, the employer  
shall pay the employee one additional hour of pay at the  
employee's regular rate of compensation for each work  
day that the meal or rest period is not provided."

12 39. It was and continues to be Defendants', and each of  
13 their, systematic business policy and practice work Plaintiffs,  
14 members of the Representative Class, and members of the Class-  
15 Action Class more than five hours per day without an off-duty 30  
16 minute meal period as required by California Labor Code section  
17 512 and section 11 of the applicable Industrial Welfare Commission  
18 Wage Order.

19 40. Furthermore, Plaintiffs, members of the Representative  
20 Class, and members of the Class have not waived their right to a  
21 30 minute meal period by mutual consent.

22 41. In addition, it was and continues to be Defendants', and  
23 each of their, systematic business policy and practice not to  
24 compensate the Plaintiffs, members of the Representative Class or  
25 Class members with the pay due and owing as required by California  
26 Labor Code sections 226.7, and subsection 11 of the applicable  
27 Industrial Welfare Commission Orders (i.e., one hour of pay per  
28 day per lunch period at the employee's regular rate of  
compensation).

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1 42. Despite all of the available California law, Defendants  
2 and each of them, willfully refused, and continue to refuse, to  
3 compensate Plaintiffs and Class Members with the pay they are owed  
4 pursuant to California Labor Code section 226.7 and subsection 11  
5 of the applicable Industrial Welfare Commission Orders.

6 43. In failing to compensate Plaintiffs and the Class  
7 Members the pay due and owing pursuant to Labor Code sections  
8 226.7 and subsection 11 of the applicable Industrial Welfare  
9 Commission Orders as alleged herein, Defendants, and each of them,  
10 acted maliciously, oppressively, despicably, with the wrongful  
11 intention of causing injury and hardship to Plaintiffs and the  
12 Class Members by reaping economic gain at Plaintiffs' and the  
13 Class' expense, in willful and conscious disregard of their  
14 statutory and regulatory right to pay due and owing.  
15 Consequently, Plaintiffs and the members of the Representative  
16 Class, and the Class-Action Class are entitled to an award of  
17 exemplary damages to punish Defendants' past conduct and to deter  
18 similar future conduct.

19 44. Furthermore, Plaintiffs and Class Members are entitled  
20 to the relief requested below.

21  
22 SECOND CAUSE OF ACTION

23 (Violation of California Labor Code section 512 and section 12  
24 of the applicable Industrial Welfare Commission Wage Order.)  
(Against WAL-MART STORES, INC,  
25 dba WAL-MART TRANSPORTATION, LLC)

26 45. Plaintiffs incorporate by reference the allegations  
27 contained in Paragraphs 1 through 44 of this Complaint as if fully  
28 set forth herein.

46. Section 12 of the applicable Industrial Welfare  
Commission Wage Order provides as follows:

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1 "(A) Every employer shall authorize and permit all  
2 employees to take rest periods, which insofar as  
3 practicable shall be in the middle of each work period.  
4 The authorized rest period time shall be based on the  
5 total hours worked daily at the rate of ten (10) minutes  
6 net rest time per four (4) hours or major fraction  
7 thereof. However, a rest period need not be authorized  
8 for employees whose total daily work time is less than  
9 three and one-half (3 ½) hours. Authorized rest period  
10 time shall be counted as hours worked for which there  
11 shall be no deduction for wages.

12 (B) if an employer fails to provide an employee a rest  
13 period in accordance with the applicable provisions of  
14 this order, the employer shall pay the employee one(1)  
15 hour of pay at the employee's regular rate of  
16 compensation for each workday that the rest period is  
17 not provided."

18 47. It was and continues to be Defendants', and each of  
19 their, systematic business policy and practice work Plaintiffs,  
20 members of the Representative Class, and members of the Class-  
21 Action Class members more than three and one half (3 ½) hours per  
22 day without a ten (10) minute rest period as required by  
23 California Labor Code section 512 and section 12 of the applicable  
24 Industrial Welfare Commission Wage Order.

25 48. In addition, it was and continues to be Defendants', and  
26 each of their, systematic business policy and practice not to  
27 compensate the Plaintiffs, members of the Representative Class or  
28 Class with the pay due and owing as required by California Labor  
29 Code sections 226.7, and subsection 12 of the applicable  
30 Industrial Welfare Commission Orders (i.e., one hour of pay per  
31 day per rest period at the employee's regular rate of  
32 compensation).

33 49. Despite all of the available California law, Defendants  
34 and each of them, willfully refused, and continue to refuse, to  
35 compensate Plaintiffs and Class Members with the pay they are owed  
36 pursuant to California Labor Code section 226.7 and subsection 12  
37 of the applicable Industrial Welfare Commission Orders.

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13 similar future conduct.  
14 51. Furthermore, Plaintiffs and Class Members are entitled  
15 to the relief requested below.

(Against WAL-MART STORES, INC,  
dba WAL-MART TRANSPORTATION, LLC)

53. California Labor Code section 201 provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately ..."

54. California Labor Code section 202 provides in pertinent part: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become

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1 due and payable not later than 72 hours thereafter, unless the  
2 employee has given 72 hours previous notice of his or her  
3 intention to quit, in which case the employee is entitled to his  
4 or her wages at the time of quitting."

5 55. California Labor Code section 203 provides in pertinent  
6 part:

7 "If an employer willfully fails to pay, without  
8 abatement or reduction, in accordance with Sections 201,  
9 201.5, 202, and 205.5, any wages of an employee who is  
10 discharged or quit, the wages of the employee shall  
11 continue as a penalty from the due date the of at the  
12 same rate until paid or until an action therefore is  
13 commenced; but the wages shall not continue for more  
14 than 30 days. An employee who secretes or absents  
15 himself or herself to avoid payment to him or her, or  
16 who refuses to receive the payment when fully tendered  
17 to him or her, including any penalty then accrued under  
18 this section, is not entitled to any benefit under this  
19 section for the time during which he or she so avoids  
20 payment.  
21 Suit may be filed for these penalties at any time before  
22 the expiration of the statute of limitations on an action  
23 for the wages from which the penalties arises."

24 56. Plaintiffs and Class Members identified herein were  
25 discharged by Defendants and/or voluntarily quit. The Defendants,  
26 in violation of California Labor Code sections 203, had a  
27 consistent and uniform policy, practice and procedure of willfully  
28 failing to pay the earned and unpaid wages or accrued vacation of  
29 all such former employees as described herein. Plaintiffs and  
30 Class Members did not secret or absent themselves from Defendants  
31 nor refuse to accept the earned and unpaid wages from Defendants.  
32 Accordingly, Defendants are liable for waiting time penalties for  
33 the unpaid wages pursuant to California Labor Code sections 203.

34 57. In addition to the penalties imposed by California Labor  
35 Code section 203, Defendants, and each of them are liable for the  
36 penalties imposed by subsection 20 of the applicable Industrial  
37 Welfare Commission Orders which provides in relevant part as  
38 follows:

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1 (a) In addition to any other civil penalties provided by  
2 law, any employer or any other person acting on behalf  
3 of the employer who violates, or causes to violate, the  
4 provisions of this order, shall be subject to the civil  
5 penalty of: (1) Initial Violation - \$50.00 for each  
6 underpaid employee for each pay period during which the  
7 employee was underpaid in addition to the amount which  
8 is sufficient to recover unpaid wages. (2) Subsequent  
9 Violations - \$100.00 for each underpaid employee for  
10 each pay period during which the employee was underpaid  
11 in addition to an amount which is sufficient to recover  
12 unpaid wages.

13 58. Despite all of the available California law, Defendants  
14 and each of them, willfully refused, and continue to refuse, to  
15 compensate Plaintiffs and Class Members with the pay they are owed  
16 pursuant to California Labor Code section 203 and section 20 of  
17 the applicable Industrial Welfare Commission Orders.

18 59. In failing to compensate Plaintiffs and the Class  
19 Members the pay due and owing pursuant to Ca. Labor Code section  
20 203 as alleged herein, Defendants, and each of them, acted  
21 maliciously, oppressively, despicably, with the wrongful intention  
22 of causing injury and hardship to Plaintiffs and the Class Members  
23 by reaping economic gain at Plaintiffs' and the Class' expense, in  
24 willful and conscious disregard of their statutory and regulatory  
25 right to pay due and owing. Consequently, Plaintiffs and the  
26 members of the Representative Class, and the Class-Action Class  
27 are entitled to an award of exemplary damages to punish  
28 Defendants' past conduct and to deter similar future conduct.

60. Furthermore, Plaintiffs and Class Members are entitled  
to the relief requested below.

**FOURTH CAUSE OF ACTION**  
(Violation of Business and Professions Code 17200 et seq.)  
(Against all Defendants)

61. Plaintiffs incorporate by reference the allegations  
contained in paragraphs 1 through 60 of this Complaint as if fully



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1 set forth herein.

2 62. Defendants, and each of them, are persons within the  
3 meaning of Business and Professions Code Section 17201.  
4 Defendants, and each of them, have engaged and continue to engage  
5 in unfair business practices in California by practicing,  
6 employing and utilizing the employment policy of failing to pay  
7 Plaintiffs, members of the Representative Class and members of the  
8 Class-Action Class employment compensation as required by the  
9 California law cited herein above. Defendants', and each of  
10 their, utilization of such unfair business practices constitutes  
11 unfair competition and provides an unfair advantage over  
12 Defendants' competitors.

13 63. Plaintiffs seek on their own behalf, on behalf of the  
14 Representative Class, and on behalf of the general public, full  
15 restitution and disgorgement of all employment compensation  
16 wrongfully withheld, as necessary and according to proof, to  
17 restore any and all monies withheld, acquired and/or converted by  
18 the Defendants by means of the unfair and/or unlawful practices  
19 complained of herein. The restitution and disgorgement requested  
20 includes all wages earned and unpaid, including interest thereon.  
21 The acts complained of herein occurred, at least in part, within  
22 the last four (4) years preceding the filing of the Complaint in  
23 this action and continue to the present.

24 64. Plaintiffs are informed and believe and on that basis  
25 allege that at all times herein mentioned Defendants, and each of  
26 them, have engaged in unlawful, deceptive and unfair business  
27 practices, as proscribed by California Business and Professions  
28 Code 17200 et seq., by depriving Plaintiffs and the members of the  
Representative Class of the minimum working condition standards  
due to them under the California Labor Code and Industrial Welfare

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1 Commission wage orders as identified herein.  
2 65. Business and Professions Code 17200, et seq., prohibits  
3 acts of unfair competition which shall mean and include any  
4 unlawful, unfair or fraudulent business act or practice. Under  
5 California law, wages unlawfully withheld from an employee  
6 constitutes an unfair business act entitling the Plaintiffs and  
7 the members of the Representative Class to a restitution remedy  
8 authorized by section 17203. Plaintiffs, the representative  
9 class, and the general public are therefore entitled to the relief  
10 requested below.

11  
12 **FIFTH CAUSE OF ACTION**

13 (Failure to Pay Wages Due And Owing. California Labor Code  
14 section 510 and subsection 3 of the applicable  
15 Industrial Welfare Commission Orders)  
16 (Against WAL-MART STORES, INC,  
17 dba WAL-MART TRANSPORTATION, LLC)

18 66. Plaintiffs incorporate by reference the allegations  
19 contained in Paragraphs 1 through 65 of this Complaint as if fully  
20 set forth herein.

21 67. California Labor Code 510 and subsection 3 of the  
22 applicable Industrial Welfare Commission Orders provide in  
23 relevant part as follows:

24 (a) Eight hours of labor constitutes a day's work. Any  
25 work in excess of eight hours in one workday and any  
26 work in excess of 40 hours in any one workweek and the  
27 first eight hours worked on the seventh day of work in  
28 any one workweek shall be compensated at the rate of not  
less than one and one-half times the regular rate of pay  
for an employee. Any work in excess of 12 hours in one  
day shall be compensated at the rate of not less than  
twice the regular rate of pay for an employee. In  
addition, any work in excess of eight hours on any  
seventh day of a workweek shall be compensated at the  
rate of not less than twice the regular rate of pay of  
an employee. Nothing in this section requires an  
employer to combine more than one rate of overtime  
compensation in order to calculate the amount to be paid  
to an employee for any hour of overtime work.

68. California Labor Code 514 and subsection 3 of the

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1 applicable Industrial Welfare Commission Orders provides an  
2 exception to the overtime provisions of California Labor Code 510  
3 in relevant part as follows:

4 Sections 510 and 511 do not apply to an employee covered  
5 by a valid collective bargaining agreement if the  
6 agreement expressly provides for the wages, hours of  
7 work, and working conditions of the employees, and if  
8 the agreement provides premium wage rates for all  
9 overtime hours worked and a regular hourly rate of pay  
10 for those employees of not less than thirty percent more  
11 than the state minimum wage.

12 69. This cause of action for payment of overtime pursuant to  
13 California Labor Code section 510 and subsection 3 of the  
14 applicable Industrial Welfare Commission Orders is brought on  
15 behalf of Plaintiffs, Representative Class Members and members of  
16 the Class who are not exempt by operation of California Labor Code  
17 514 and the corresponding language in subsection 3 of the  
18 applicable Industrial Welfare Commission Orders.

19 70. During all relevant periods, Defendants, and each of  
20 them, suffered or permitted Plaintiffs, members of the  
21 Representative Class and Class-Action Class Members to work in  
22 excess of eight (8) hours per day and to work in excess of forty  
23 (40) hours per week.

24 71. During all relevant periods, Defendants, and each of  
25 them, suffered or permitted Plaintiffs, the members of the  
26 Representative Class and the members of the Class-Action Class to  
27 work up to fourteen hours per day without a lunch or break period.

28 72. However, Defendants, and each of them, had and continue  
to have a systematic business policy of deducting thirty (30)  
minutes from the total time each driver worked each day and refuse  
to pay them for the thirty (30) minutes the drivers were required  
to devote to work instead of a daily lunch period.

73. Since Defendants, and each of them, deduct the thirty  
(30) minutes from the total hours worked by each driver each day,

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1 Defendants, and each of them, have willfully failed and continue  
2 to fail to pay Plaintiffs, members of the Representative Class and  
3 Class-Action Class Members, who are not exempt by operation of  
4 California Labor Code section 514 and the corresponding language  
5 in subsection 3 of the applicable Industrial Welfare Commission  
6 Orders, 2.5 hours of overtime for each five day work week and 3.0  
7 hours of overtime for each six day work.

8 74. Despite all of the available California law, Defendants  
9 and each of them, willfully refused, and continue to refuse, to  
10 pay Plaintiffs and Class Members the pay they are owed.

11 75. In failing to compensate Plaintiffs and the Class  
12 Members for the wages due and owing pursuant to California Labor  
13 Code section 510 as alleged herein, Defendants, and each of them,  
14 acted maliciously, oppressively, despicably, with the wrongful  
15 intention of causing injury and hardship to Plaintiffs and the  
16 Class Members by reaping economic gain at Plaintiffs' and the  
17 Class' expense, in willful and conscious disregard of their  
18 statutory and regulatory right to overtime compensation.  
19 Consequently, Plaintiffs and the members of the Class-Action Class  
20 are entitled to an award of exemplary damages to punish  
21 Defendants' past conduct and to deter similar future conduct.

22 76. Furthermore, Plaintiffs and Class Members are entitled  
23 to the relief requested below.

24 SIXTH CAUSE OF ACTION

25 (Failure To Provide Accurate Wage Statements. California Labor  
26 Code 226, And Subsections of the applicable  
27 Industrial Welfare Commission Orders.)  
(Against WAL-MART STORES, INC,  
dba WAL-MART TRANSPORTATION, LLC)

28 77. Plaintiffs incorporate by reference the allegations  
contained in paragraphs 1 through 76 of this Complaint as if fully  
set forth herein.

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1 78. California Labor Code 226 provides:

2 226. Itemized statements; contents; records; inspection of  
3 records; compliance with inspection request; limitation  
4 of application

5 (a) Every employer shall, semimonthly or at the time of  
6 each payment of wages, furnish each of his or her  
7 employees, either as a detachable part of the check, draft,  
8 or voucher paying the employee's wages, or separately when  
9 wages are paid by personal check or cash, an accurate  
10 itemized statement in writing showing (1) gross wages  
11 earned, (2) total hours worked by the employee, except for  
12 any employee whose compensation is solely based on a salary  
13 and who is exempt from payment of overtime under  
14 subdivision (a) of Section 515 or any applicable order of  
15 the Industrial Welfare Commission, (3) the number of  
16 piece-rate units earned and any applicable piece rate if  
17 the employee is paid on a piece rate basis, (4) all  
18 deductions, provided that all deductions made on written  
19 orders of the employee may be aggregated and shown as one  
20 item, (5) net wages earned, (6) the inclusive dates of the  
21 period for which the employee is paid, (7) the name of the  
22 employee and his or her social security number, except that  
23 by January 1, 2008, only the last four digits of his or her  
24 social security number or an existing employee  
25 identification number other than a social security number  
26 may be shown on the check, (8) the name and address of the  
27 legal entity that is the employer, and (9) all applicable  
28 hourly rates in effect during the pay period and the  
corresponding number of hours worked at each hourly rate  
by the employee. The deductions made from payments of wages  
shall be recorded in ink or other indelible form, properly  
dated, showing the month, day, and year, and a copy of the  
statement or a record of the deductions shall be kept on  
file by the employer for at least three years at the place  
of employment or at a central location within the State of  
California.

(b) An employer that is required by this code or any  
regulation adopted pursuant to this code to keep the  
information required by subdivision (a) shall afford  
current and former employees the right to inspect or copy  
the records pertaining to that current or former employee,  
upon reasonable request to the employer. The employer may  
take reasonable steps to assure the identity of a current  
or former employee. If the employer provides copies of the  
records, the actual cost of reproduction may be charged to  
the current or former employee.

(c) An employer who receives a written or oral request to  
inspect or copy records pursuant to subdivision (b)  
pertaining to a current or former employee shall comply  
with the request as soon as practicable, but no later than  
21 calendar days from the date of the request. A violation  
of this subdivision is an infraction. Impossibility of  
performance, not caused by or a result of a violation of  
law, shall be an affirmative defense for an employer in any  
action alleging a violation of this subdivision. An  
employer may designate the person to whom a request under



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1 this subdivision will be made.

2 (d) This section does not apply to any employer of any  
3 person employed by the owner or occupant of a residential  
4 dwelling whose duties are incidental to the ownership,  
5 maintenance, or use of the dwelling, including the care and  
6 supervision of children, or whose duties are personal and  
7 not in the course of the trade, business, profession, or  
8 occupation of the owner or occupant.

9 (e) An employee suffering injury as a result of a knowing  
10 and intentional failure by an employer to comply with  
11 subdivision (a) is entitled to recover the greater of all  
12 actual damages or fifty dollars (\$50) for the initial pay  
13 period in which a violation occurs and one hundred dollars  
14 (\$100) per employee for each violation in a subsequent pay  
15 period, not exceeding an aggregate penalty of four thousand  
16 dollars (\$4,000), and is entitled to an award of costs and  
17 reasonable attorney's fees.

18 (f) A failure by an employer to permit a current or former  
19 employee to inspect or copy records within the time set  
20 forth in subdivision (c) entitles the current or former  
21 employee or the Labor Commissioner to recover a seven  
22 hundred fifty dollars (\$750) penalty from the employer.

23 (g) An employee may also bring an action for injunctive  
24 relief to ensure compliance with this section, and is  
25 entitled to an award of costs and reasonable attorney's  
26 fees.

27 79. Defendants have failed to maintain the records  
28 required by Labor Code §226. Consequently, it will be more  
difficult for Plaintiffs and Class Members to establish all  
actual hours worked for Defendant over the four years preceding  
the filing of this complaint. As a result, Plaintiffs and class  
members will incur additional attorney fees and costs and will  
be required to devote significantly more time to this  
litigation.

80. Accordingly, Plaintiffs and Class Members may be  
prejudiced in their ability to establish the total amount of  
their actual damages.

81. Therefore, Plaintiffs and Class Members seek the  
remedy set forth in California Labor Code §226(e).



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SEVENTH CAUSE OF ACTION

(Failure to Pay Minimum Wage As Required By  
Subsection 4 Of The Applicable Industrial  
Welfare Commission Orders.)  
(Against WAL-MART STORES, INC., and Does 1-50.)

81. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 80 of this Complaint as if fully set forth herein.

82. Subsection 4 of the applicable Industrial Welfare Commission Orders provides in relevant part as follows:

(a) Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 2002, ... (b) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

83. During all relevant periods, Defendants, and each of them, suffered or permitted Plaintiffs, members of the Representative Class and Class-Action Class Members to work in excess of eight (8) hours per day and to work in excess of forty (40) hours per week.

84. During all relevant periods, Defendants, and each of them, required Plaintiff, members of the Representative Class and Class-Action Class Members to work unpaid hours.

85. However, Defendants, and each of them, had and continue to have a systematic business policy and practice of refusing to pay them for all time they were required to devote to work.

86. Defendants, and each of them, have willfully failed and continue to fail to pay Plaintiffs, members of the Representative Class and Class-Action Class Members minimum wage.

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1 87. It was and continues to be Defendants', and each of  
2 their, systematic business policy and practice to not pay  
3 minimum wage as required by California law and as alleged  
4 herein.

5 88. Despite all of the available California law,  
6 Defendants and each of them, willfully refused, and continue to  
7 refuse, to compensate Plaintiffs and Class Members with the pay  
8 they are owed pursuant to subsection 4 of the applicable  
9 Industrial Welfare Commission Orders.

10 89. In failing to compensate Plaintiffs and the Class  
11 Members the pay due and owing as alleged herein, Defendants,  
12 and each of them, acted maliciously, oppressively, despicably,  
13 with the wrongful intention of causing injury and hardship to  
14 Plaintiff and the Class Members by reaping economic gain at  
15 Plaintiff's and the Class' expense, in willful and conscious  
16 disregard of their statutory and regulatory right to receive pay  
17 due and owing. Consequently, Plaintiff, members of the  
18 Representative Class and Class-Action Class Members are entitled  
19 to an award of exemplary damages to punish Defendants' past  
20 conduct and to deter similar future conduct.

21 90. Furthermore, Plaintiffs and Class Members are entitled  
22 to the relief requested below.

23 **PLAINTIFFS REQUEST JURY TRIAL**

24 **PRAYER FOR RELIEF**

25 **WHEREFORE,** Plaintiffs pray for judgment and relief as  
26 follows:

27 1. An Order certifying that the action may be maintained  
28 as a class action;

2. Compensatory and statutory damages, penalties and  
restitution, as appropriate and available under each cause of

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1 action, in an amount to be proven at trial;

2 3. Exemplary and punitive damages, as appropriate and  
3 available under each cause of action, pursuant to California  
4 Civil Code section 3294;

5 4. An Order imposing an asset freeze in constructive trust  
6 of Defendants, and each of their, ill-gotten gains, and  
7 enjoining Defendants from failing and refusing to disgorge all  
8 monies acquired by means of any act or practice declared by this  
9 Court to constitute unlawful, unfair or fraudulent acts or  
10 practices;

11 5. That Defendants, and each of them, be ordered to show  
12 cause why they should not be enjoined and ordered to comply the  
13 applicable California Industrial Welfare Commission Wage Orders  
14 related to payment of employment compensation and record keeping  
15 for Defendants' employees who are engaged in non-exempt work and  
16 work, without a meal or break period;

17 6. For a declaratory judgment and decree adjudging and  
18 decreeing that the Plaintiffs and the Class have meal periods  
19 and break periods for which they have not been paid in violation  
20 of California Law;

21 7. For restitution to Plaintiffs and other similarly  
22 affected members of the general public (and disgorgement from  
23 Defendants) of all funds unlawfully acquired by Defendants by  
24 means of any acts or practices declared by this Court to be  
25 violative of the California Labor Code, Industrial Welfare  
26 Commission Orders, and California Business and Professions Code  
27 17200 et seq.

28 8. For any and all profits, whether direct or indirect,  
Defendants acquired by its conversion of the Plaintiffs' and  
Class Members' wages;

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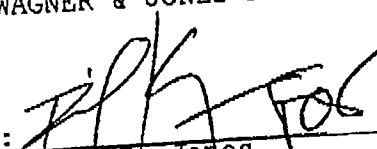
1 9. For pre-judgment and post-judgment interest as allowed  
2 by California Labor Code sections 218.6 and 1194;

3 10. For reasonable attorney's fees, expenses and costs as  
4 provided by California Labor Code sections 218.5 and 1194; and

5 11. Such other and further relief as the Court deems just  
6 and proper.

7  
8  
9 DATED: November 3 2008

LAW OFFICES OF  
WAGNER & JONES LLP

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12 By:   
13 Andrew B. Jones  
14 Attorneys for Plaintiffs

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PROOF OF SERVICE

(Code Civ. Proc. §§ 1013a, 2015.5)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno; I am over the age of 18 years and not a party to the within above-entitled cause; my business address is 1111 E. Herndon, Suite 317, Fresno, California.

I served the within document described as FIRST AMENDED COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Jacob Weisberg  
LAW OFFICES  
844 N. Van Ness  
Fresno, CA 93728  
559/442-3164 Fax

Gregory Spallas  
PHILLIPS, SPALLAS & ANGSTADT  
650 California St., 10<sup>th</sup> Flr.  
San Francisco, CA 94108  
415/278-9411 Fax

Co-Counsel for Plaintiff

Counsel for Defendant

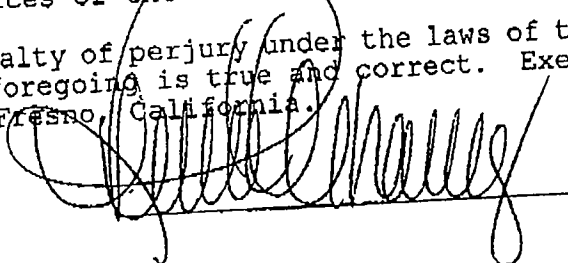
☒ (BY MAIL) placing the envelopes for collection and mailing on the date and at my address shown above following our ordinary business practices. I am completely familiar with Wagner & Jones' practice of collection and processing correspondence for mailing pursuant to which the envelopes would be deposited with the United States Postal Service the same day in the ordinary course of business.

☐ (BY OVERNIGHT MAIL SERVICE) by placing the envelope for collection following our ordinary business practices for collection and processing correspondence for mailing by express or overnight mail.

☐ (BY FACSIMILE) In addition to service by mail as set forth above, the person(s) by whose name an asterisk is affixed, was also forwarded a copy of said documents by facsimile.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 3, 2008, at Fresno, California.



11-12-08

11/06/2008 14:44 FAX 5594490749

Wagner and Jones

2:40pm

002/002

FIRST AMENDED

**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**  
WAL-MART STORES, INC., a Delaware Corporation dba WAL-MART TRANSPORTATION, LLC, JEFFREY HAMMOND and DOES 1-50, inclusive**FILED BY FAX**

ALAMEDA COUNTY

November 06, 2008

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**DONALD C. BRYAN, VIRGIL CALDWELL, CARROLL HAMPTON and  
ROBERT RODRIGUEZ

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

ALAMEDA SUPERIOR COURT  
1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Andrew B. Jones  
WAGNER & JONES LLP  
1111 E. Herndon, Ste. 317

Fresno, CA 93720

DATE: November 06, 2008

Clerk, by \_\_\_\_\_

(Secretario)

Deputy

(Adjunto)

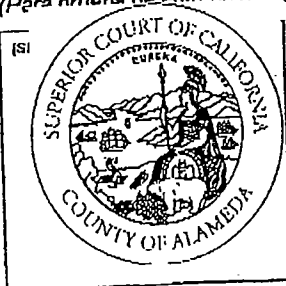
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010).)**NOTICE TO THE PERSON SERVED: You are served**

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): *Wal-Mart Stores, Inc., a Delaware Corp dba Walmart Transportation LLC.*

- under:
- |  |   |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

- ☒ by personal delivery on (date): *11-12-08*

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. January 1, 2004)**SUMMONS**Legal  
Solutions  
Co. PlusPage 1 of 1  
Code of Civil Procedure §§ 412.20, 485



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Andrew B. Jones (076915) Law Offices of Wagner & Jones 1111 E. Herndon Suite 317 Fresno, CA 93720  TELEPHONE NO.: 559.449-1800 FAX NO. (Optional): 559.449-0749 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <u>Plaintiff</u>		FOR COURT USE ONLY <b>FILED BY FAX</b> ALAMEDA COUNTY November 18, 2008 CLERK OF THE SUPERIOR COURT By Doreen Shick, Deputy CASE NUMBER: <b>RG08414583</b>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA. 94612 BRANCH NAME:		CASE NUMBER: RG08414583	
PLAINTIFF/PETITIONER: Bryan, et al. DEFENDANT/RESPONDENT: Wal-Mart Stores, Inc., et al.		Ref. No. or File No.:	
<b>PROOF OF SERVICE OF SUMMONS</b>			

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☐ summons
  - b. ☐ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☐ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☐ other (specify documents): First Amended Summons and First Amended Complaint, Notice of Hearing
3. a. Party served (specify name of party as shown on documents served): Wal-Mart Stores, Inc., a Delaware Corporation dba Wal-Mart Transportation, LLC.  
 b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
 Margerite Wilson: Agent for service of process
4. Address where the party was served: 818 W. Seventh Street  
 Los Angeles, CA. 90017
5. I served the party (check proper box)
  - a. ☒ by **personal service**. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 11-12-08 (2) at (time): 2:40 p.m.
  - b. ☐ by **substituted service**. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Bryan, et al.	CASE NUMBER: RG08414583
DEFENDANT/RESPONDENT: Wal-Mart Stores, Inc., et al.	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date):  
(2) from (city):  
(3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)  
(4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

- ☐ Additional page describing service is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.  
b. ☒ as the person sued under the fictitious name of (specify): dba Wal-Mart Transportation, LLC.  
c. ☐ as occupant.  
d. ☒ On behalf of (specify): Wal-Mart Stores, Inc.  
under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: FRESNO ATTORNEY SERVICE/Ryan Price  
b. Address: 6083 N. Figarden Drive, PMB 187, Fresno, CA. 93722  
c. Telephone number: 559.375-2804  
d. The fee for service was: \$ 36.00  
e. I am:

- (1) ☐ not a registered California process server.  
(2) ☐ exempt from registration under Business and Professions Code section 22350(b).  
(3) ☒ registered California process server:  
(i) ☐ owner ☐ employee ☒ independent contractor.  
(ii) Registration No.: 2126  
(iii) County: Orange

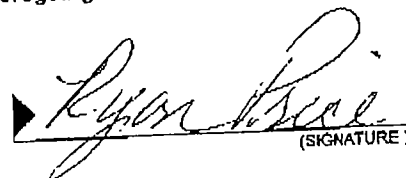
8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 11-17-08

Ryan Price  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)

RECEIVED

NOV 18 2008

001/003

11/18/2008 15:25 FAX 5594490749

Wagner and Jones

GCN

Wagner & Jones LLP  
Attn: Jones, Andrew B  
1111 East Herndon  
Ste. 317  
Fresno, CA 93720

Wal-Mart Stores, Inc., a Delaware  
Corporation

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

Bryan

Plaintiff/Petitioner(s)

VS.

Wal-Mart Stores, Inc., a Delaware Corporation

Defendant/Respondent(s)

(Abbreviated Title)

No. RG08414583

## NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:  
Notice is hereby given that the above-entitled action has been set for:  
Complex Determination Hearing  
Case Management Conference

You are hereby notified to appear at the following Court location on the date and  
time noted below:

Complex Determination Hearing:  
DATE: 11/24/2008 TIME: 02:00 PM DEPARTMENT: 20  
LOCATION: Administration Building, Fourth Floor  
1221 Oak Street, Oakland

Case Management Conference:  
DATE: 01/09/2009 TIME: 11:00 AM DEPARTMENT: 20  
LOCATION: Administration Building, Fourth Floor  
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 4.2 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 20 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6936. Please consult Appendix E to Local Rules 4 and 5 of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions.

11/18/2008 15:25 FAX 5594490749

Wagner and Jones

002/003

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 20.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at Dept.20@alameda.courts.ca.gov or by phone at (510) 267-6936.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 10/17/2008

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 10/17/2008.

By



Deputy Clerk

11/18/2008 15:25 FAX 5594490749

Wagner and Jones

RECEIVED 003/003

NOV 18 2008

GCN

**PROOF OF SERVICE**  
(Code Civ. Proc. §§ 1013a, 2015.5)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno; I am over the age of 18 years and not a party to the within above-entitled case.

I served the within document described as **notice of hearing** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

G. Charles Nierlich  
**GIBSON, DUNN & CRUTCHER LLP**  
One Montgomery St.  
San Francisco, CA 94104-4505  
415/374-8486 Fax  
[gnierlich@gibsondunn.com](mailto:gnierlich@gibsondunn.com)

☐ **(BY MAIL)** placing the envelopes for collection and mailing on the date and at my address shown above following our ordinary business practices. I am completely familiar with Wagner & Jones' practice of collection and processing correspondence for mailing pursuant to which the envelopes would be deposited with the United States Postal Service the same day in the ordinary course of business.

☐ **(BY OVERNIGHT MAIL SERVICE)** by placing the envelope for collection following our ordinary business practices for collection and processing correspondence for mailing by express or overnight mail.

☒ **(BY FACSIMILE)** In addition to service by mail as set forth above, the person(s) by whose name an asterisk is affixed, was also forwarded a copy of said documents by facsimile.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 18, 2008, at Fresno, California.

